

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.10106 OF 2014

Pralhad Kisan Pachpute & Ors. ... Petitioners

Vs.

Vasant Ganpat Pachpute & Ors. ... Respondents

Mr.Kalpesh Patil i/b A.R. Kapadnis for the Petitioners

Mr.Ketan Joshi for Resp. No.1

Mr.G.S. Hegde with C.M. Lokesh and Ms.J. Pandey i/b A.R. Bhole
& Co. for Resp. No.5

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: JULY 31, 2017

P.C. :

1. Rule. By consent, Rule made returnable forthwith and heard finally.
2. By this Writ Petition, the order dated 25.9.2014 in Application filed under Order 6 Rule 17 of the Civil Procedure Code passed by the learned Civil Judge, Senior Division, Khed is challenged. The said application was made by the plaintiffs seeking amendment in the plaint. The plaintiffs have filed the suit for declaration of their right in their ancestral property and for a declaration that the sale deed dated 26.4.1984 is not binding on them and also seeking an

order that the amount fallen to their share in the total compensation given by MIDC is to be paid to them.

3. The learned Counsel for the petitioners has submitted that the suit is filed in 2012. However, the plaintiffs after recording the evidence of the defendants, realised that the compensation towards the land acquisition was given to the defendants by the MIDC and accordingly, they sought amendment in the prayer by which they want to add that amount of Rs.94,92,599/- which was received by defendant No.1 and also to be given to the plaintiffs and defendant Nos.6 and 7.

4. The application was opposed by the respondents. The learned Counsel for the respondents submitted that the amendment cannot be allowed as it is not carried out with due diligence. The learned Counsel submitted that recording of evidence of the parties is already over in view of the judgment in **J.Samuel & Ors. vs. Gattu Mahesh & Ors.**¹, no typographical error is also to be allowed after commencement of trial. The learned Counsel for the respondents also submitted that the fact of receipt of the amount from MIDC is disclosed by the respondents

¹ (2012) 2 SCC 300

in their written statement which was filed prior to the commencement of the evidence.

5. Heard submissions. Perused the application for amendment and the Schedule for the amendment. In the suit, the plaintiffs have asked for compensation of the amount of Rs.94,92,599/-, which is specifically mentioned. The said amount of Rs.94,92,599/- is mentioned in prayer clauses of the plaint. It is also true that the defendants have disclosed that they have received the amount of compensation from the other defendants i.e., MIDC. However, it appears that this fact was missed by the plaintiffs and then after recording of the evidence of the plaintiffs and the defendant, now, the plaintiffs have come out with the application under Order 6 Rule 17 of the Civil Procedure Code.

6. Admittedly, the trial has begun and in normal course, no amendment can be allowed when the trial has proceeded unless due diligence is shown. In the case of **J. Samuel (supra)**, the Supreme Court has defined as what is meant by typographical error. In the said case, certain pleadings were prayed to be added under the pretext of typographical error. In the present case, the plaintiffs have not taken any stand of typographical error but the

plaintiffs have said that this fact remained to be mentioned in the plaint. It appears that it is an oversight. The plaintiffs have missed this contention of the defendants and after recording evidence, the plaintiffs felt it required to be added in the present suit. It is made clear that the exact figure of compensation is already mentioned in the plaint and thus, the amendment is not at all going to change the nature of the suit and it is very much consistent with the pleadings and hence, I am of the view that it is to be allowed.

7. In the circumstances, the petition is allowed in terms of prayer clause (a) with costs of Rs.5,000/- to be paid within one week to Defendant No.1. Amendments shall be carried out within one week. If the respondents want to file additional written statement and tender additional evidence, they may be allowed to do the same and only to this limited extent, the permission be granted by the trial Court.

8. Writ Petition is disposed of accordingly.

(MRIDULA BHATKAR, J.)