

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.13158 OF 2016

Sudhakar Dattatray Chiplunkar ... Petitioner
Vs.
Shankar Sitaram Mundhekar (decd) through LRs
Indira Shankar Mundhekar and others ... Respondents

Mr. Tanmay Vispute i/b. Mr. Sachin S. Punde for Petitioner.

CORAM : R. G. KETKAR, J.
DATE : JANUARY 19, 2017

P.C. :

Heard Mr. Vispute, learned Counsel for petitioner at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as 'defendant No.1', has challenged the judgment and order dated 14.10.2016 passed by the learned Civil Judge, Junior Division, Chiplun below exhibit-227 in Regular Civil Suit No.21 of 2010. By that order, the learned trial Judge allowed the application made by the plaintiffs under Order VI, Rule 17 of the Code of Civil Procedure, 1908 for amending the plaint.

3. In support of this Petition, Mr. Vispute submitted that in paragraph 8 of the impugned order, the learned trial Judge recorded a finding that the application for amendment is made by the plaintiffs before commencement of the trial. He submitted that the said finding is factually incorrect and contrary to record. In paragraph 4 of the Petition, defendant No.1 has specifically averred that the learned trial Judge recorded evidence of the plaintiffs and defendants and the respective parties filed their Evidence Close Purshis. Plaintiffs also advanced final arguments on 26.09.2016 and the Suit was adjourned for arguments of

the defendants on 03.10.2016. It is on that date, plaintiffs filed application exhibit-227 for amending the plaint. He submitted that plaintiffs have not satisfied the conditions stipulated in proviso to Order VI, Rule 17 of C.P.C., namely due diligence, and therefore, the learned trial Judge was not justified in allowing the application.

4. I have considered the submissions advanced by Mr. Vispute. I have also perused the material on record. Plaintiffs have institute Suit for declaration of their rights over the road, more particularly described in paragraph 1 of the plaint; for perpetual injunction restraining defendants No.1 to 3 from causing obstruction to defendants from using the said road. It appears that during the pendency of the Suit, status-quo was granted by the trial Court. It is the case of the plaintiffs that despite status-quo order, defendants have committed encroachment to the extent of 75 sq.mtrs. Plaintiffs, therefore, took out application for mandatory injunction, which was rejected by the trial Court. Plaintiffs, therefore, filed application for amending the plaint for removal of the encroachment. Perusal of the plaint shows that on the basis of the order dated 05.01.2013 below exhibit-133, plaintiffs added paragraphs 13A and 14A on the ground that by committing breach of the status-quo order, defendants have put up a compound wall and on that basis, even additional Court fee was paid.

5. Perusal of the application exhibit-227 shows that plaintiffs have alleged breach of the status-quo order by the defendant No.1 and defendants committing encroachment to the extent of 75 sq.mtrs. Though plaintiffs filed application for mandatory injunction that was rejected by the trial Court, and therefore, plaintiffs were required to file application for amendment with a view to avoiding multiplicity of the proceedings. In view thereof and for the reasons recorded in the

impugned order, more particularly paragraphs 8 to 10, I do not find any case is made out for interfering with the impugned order under Article 227 of the Constitution of India. Hence, Petition fails and the same is dismissed. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

(R. G. KETKAR, J.)

Minal Parab