

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.71 OF 2017

Shri Dada Patil Lahanu Nikam
and Anr.

..Petitioners.

Vs

Shri Rajaram Narayan Nikam
and Anr.

.. Respondents

Mr. P.M.Arjunwadkar, Advocate for Petitioners.

CORAM : R.G.KETKAR,J.
DATE : 13/01/2017

PC:

1. Heard Mr. P.M.Arjunwadkar, learned counsel for the petitioners at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as 'plaintiffs', have challenged the Judgment and order dated 1.10.2016 passed by the learned Jt. Civil Judge, Jr.Dn., Yeola below Exhibit 74 in Regular Civil Suit No.122 of 2011. By that order, the learned trial Judge allowed the second application made by the defendants under Order VI, Rule 17 of C.P.C. for correcting mistakes in description of boundaries.
3. In the written statement filed by defendants no.1 and 2, original boundaries of Gat no. 460/1 and 460/2 were given as under:

East : Gat No. 454 and 458;
West : Gat No.455 and 457;
South : Gat no. 455;
North : Gaovthan and Gat No. 458

4. Defendants no.1 and 2 filed application Exhibit-74 for substituting the description of northern boundary to the following effect:

Gavthan and Gat No.461 and Gat No. 454.

By the impugned order, the learned trial Judge allowed the application.

5. In support of this petition, Mr. Arjunwadkar submitted that this is the second application for amendment. Defendants no.1 and 2 claimed to have purchased Gat Nos. 460/1 and 460/2 from the original owner by sale deed. Thus, they were aware of the boundaries given of Gat Nos. 460/1 and 460/2 and still they made mistakes in descriptions of the boundaries of these Gat numbers. In other words, there is total lack of due diligence on their part. He, therefore, submitted that the learned trial Judge was not justified in allowing the application.

6. I have considered the submissions advanced by Mr Arjunwadkar. I have also perused the material on record. I have already indicated descriptions given by defendants no. 1 and 2 in the written statement and the proposed amendment. While allowing the application, the learned trial Judge has given reasons in paragraph 6. The learned trial Judge has observed that the trial is yet to begin. He further observed that corrected

map and boundaries with extract of land is filed on record by defendants below Exhibit 67. At the stage of considering the application for amendment, merits cannot be gone into. In view thereof and for the reasons recorded in paragraph 6 of the impugned order, I do not find any ground for interfering with the impugned order. Hence, petition fails and the same is dismissed. It is, however, expressly made clear that where a decree is appealed from by the petitioners, 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.)