

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

**WRIT PETITION NO.2199 OF 2017**

Ramesh Ganpat Kashid & Anr. ...Petitioners

Versus

Vasantrao Shankarrao Hire ...Respondent

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Mr.Milind M.Sathaye for the Petitioners.

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**CORAM: Mrs.MRIDULA BHATKAR, J.  
DATED: JULY 11, 2017**

**P.C. :**

1. This petition is directed against the order dated 18.11.2016 passed by the learned 3<sup>rd</sup> Jt. Civil Judge, Junior Division, Malegaon thereby allowing the application below Exhibit 29 filed by the respondent/plaintiff under Order VI Rule 17 of the Code of Civil Procedure, 1908.

2. It is the case of the respondent/plaintiff that he had filed a Suit for simpliciter injunction in respect of his land. He had purchased the land from the father of the petitioners/defendants. At the time of consolidation, due to mistake in the calculation, in the area of Survey no. 9 / 1B inadvertently shown as 0.97R instead of 1 Hecter and 30R and therefore, he was persuading the said matter before the Revenue

Authority. He had filed a Regular Civil Suit No. 455 of 2014 for injunction. Thereafter, he had filed an application below Exhibit 29 under Order VI Rule 17 of the Code of Civil Procedure for amendment of the plaint and adding prayer in the Suit. He wanted to add the prayer of declaration that he be declared as an owner and he is in possession of the suit land. He also wanted to add the pleadings about the history of his legal proceedings before the Revenue Authority. The said application was allowed. Hence, this Writ Petition.

3. The learned counsel for the petitioners submits that initially the Suit was filed for simpliciter injunction. Thereafter, the respondent/plaintiff wants to add the prayer of declaration by making additional statement, which should have been made at the time of filing of the Suit, as these facts are within his knowledge. He further submits that the respondent/plaintiff is not due diligent in making such prayer at the time of filing of the Suit. From the pleadings, it is clear that in the year 1990, the respondent/plaintiff realized that in the revenue record the area of land was not shown as 1 Hectar 30R, but it was shown as 0.97R. He further submits that if this was the fact, then why the respondent/plaintiff did not mention this fact in the plaint and asked for declaration. He argues that this fact was within the knowledge of the respondent/plaintiff and the Suit was filed in the year 2014 and

thereafter he had sought relief of declaration. The relief of declaration was time barred. He further submits that the petitioners/defendants have seriously challenged the issue of limitation, which also be considered, if not now, then at the time of settlement of the issue. He further submits that the application for amendment was challenged by the petitioners/defendants by filing reply, which the trial Court ought to have taken into account and rejected the said application.

4. Perused the plaint, proposed amendment and the impugned order. The facts of purchased of the suit land from the father of the petitioners/defendants is admitted, only the dispute is in respect of the area of the land and the numbering of that particular land at the time of consolidation of the scheme. The plaintiff maintains that 1 Hecter and 30 R land was purchased from the father of the petitioners/defendants and he is in possession of the said land. It appears that at the time of execution of Hissa Form No. 12, there was a documentary mistake and on paper it was shown as 0.97R. As factual, the plaintiff was in possession of 1 Hecter 30 R land. It is shown from the pleadings that in the year 1990, this fact was realized by the plaintiff and therefore, he moved an application before the Talathi for correcting the record. Thereafter, he moved the application before the D.I.L.R. for correcting the record, then Appeal No. 158 of 2012 was filed before the D.I.L.R.

The said appeal was decided in favour of the respondent/plaintiff. Thereafter, the petitioners/ defendants had filed an Appeal No. 236 of 2013 against the order of D.I.L.R. before the Higher Authority and the said appeal was allowed on 27.10.2014. Consequently, the plaintiff had moved the application before the Revenue Ministry. On 26.08.2015, the Revenue Ministry gave finding that this application was rejected by holding that carrying out an amendment to the consolidation of scheme, after the gap of 40 years would not be proper and therefore, the plaintiff as per his case though in the possession of 1 Hecter and 30 R land had no option but to move the application for amendment to seek further relief of declaration in the Civil Court where his Suit was pending. I am observing that the learned counsel for the petitioner now seeing the revenue proceedings and persuasion before the Revenue Authority by the respondent/plaintiff for the correction of record is not disputed, rather the petitioner has actively litigated in the said proceedings.

5. Under such circumstances, I do not find there is any delay in filing the application for amendment of the plaint and seek relief of declaration by adding the prayer clause. The order passed by the learned Judge is a well reasoned order. Nothing can be faulted with. Hence, Writ Petition is summarily dismissed.

**(MRIDULA BHATKAR, J.)**