

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

925 WRIT PETITION NO.730 OF 2018

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Pralhad s/o Sakharam Shinde

...Petitioner.

Versus

Narayan Sakharam Shinde and others.

..Respondents..

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Advocate for Petitioner : Mr. Biyani Sushil M. And P S Pawar

Advocate for Respondents : Mr Kedar Balbhim R. For R No. 4.

Miss A S Jadhav h/f P R Katneshwarkar advocate for respondent nos.
1 to 3, 5 to 7, 9 to 13, 16 to 18.

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Coram : N.M. Jamdar, , J.

Dated : 7 December 2018

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ORAL ORDER :-

1. By this petition, the petitioner/plaintiff has challenged the order passed by the learned Civil Judge Junior Division, Jafrabad refusing the application for amendment of the plaint.

2. The petitioner-plaintiff, by the proposed amendment have sought to correct the sizes of the suit property. According to the petitioner-plaintiff, the sizes of the suit property have been incorrectly mentioned, which is only a typographical error and will not cause

prejudice to the respondents.

3. Notice was issued and respondents served. At the time of issuance of notice, the learned single Judge has observed thus :-

“5. On perusing Exhibit 99, I find that the sizes of three properties are sought to be changed from 45 R to 65R, from 3 Hector 42 R to 8 Hector 6 R and 3 Hector 19 R to 3 Hector 61 R. Apparently, the plaintiff has not been cautious while drafting the plaint when the suit was instituted in 2010. However, it cannot be ignored that since the suit is for partition and separate possession, the Petitioner's claim to a portion of these properties would be defeated. Hardships caused to the contesting Defendants can be softened by imposing costs.”

This Court has thus found that indulgence needs to be extended in favour of the petitioner/plaintiff upon imposition of costs.

4. The petitioner has deposited an amount of Rs.13,000/- pursuant to the directions issued by this Court on 22 January 2018. The respondents, who have filed their appearance in this petition through Advocates, will be entitled to withdraw these costs. The other respondents, though served, have not filed their appearance. In the circumstances, the impugned order passed by the learned Civil Judge J.D. Jafrabad dated 6 November 2017 is quashed and set aside. The application filed by the petitioner below exh.99 in RCS No.84 of

2010 is allowed. The petitioner will carry out the amendment within a period of four weeks from the date the writ of this Court reaches the Civil Court. The respondents, who have filed their appearance in this petition through Advocate/s, are entitled to withdraw the amount of costs that has been deposited in the trial Court.

6. Writ Petition accordingly disposed of in the above terms.

(**N.M. Jamdar, J.**)

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