

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1381 OF 2018
(BaliramGovind Gaikwad Vs. Ashok Tatyaba Ohol and others)

Mr.S.S.Bora, Advocate for the petitioner.
Mr.R.R.Karpe, Advocate for respondent Nos. 1 to 3.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 06/02/2018

PER COURT :

1. The petitioner is aggrieved by the order dated 06/01/2018 by which defendant No.3 has been allowed to amend the written statement for the second time and application Exh.103 in RCS No.175/2005 has been allowed.

2. I have considered the strenuous submissions of the learned Advocate for the petitioner/original plaintiff and respondent Nos. 1 to 3, the original defendants who are contesting litigants and who are the beneficiaries of the impugned order.

3. The litigating sides were before this Court in an earlier round in WP No.8254/2010 which was decided by judgment dated 06/06/2017. These defendants were permitted to correct the typographical mistake in their written statement by which Gat no.1

was erroneously mentioned as Gat No.5. By virtue of the said order, these defendants have amended their written statement.

4. Exhibit 103 was then filed on 08/11/2017 contending that as Gat No.5 is replaced by Gat No.1 in the written statement, the earlier boundaries of the property were wrongly mentioned since they were in relation to Gat No.5 and the said mistake needs to be cured before it becomes too late. The Trial Court has imposed costs of Rs.1,000/- and has granted liberty to these defendants to amend their written statement again.

5. Learned Advocate for the petitioner has strenuously criticized the impugned order on two counts. Firstly that the defendants were earlier allowed to amend their written statement. Once they could notice the mistake with regard to the Gat No., they should have prayed for consequential amendment in application Exh.82 which was allowed by this Court and the Gat No. was corrected. The petitioner / plaintiff is battling alone with the defendants who are indulging in delaying tactics, which is quite evident when they did not pray for changing the description of the boundaries when the Gat No. was corrected. Exhibit 82 was earlier rejected on 03/08/2010 and this Court had stayed the proceedings in WP No.8254/2010.

After 7 years, the suit which is instituted in 2005, progressed and these defendants have again applied brakes in the said suit.

6. Though it is obvious that the defendants need to correct the boundaries as the earlier boundaries were mistakenly narrated with reference to Gat No.5 which is in fact Gat No.1, these consequential and logical corrections should have been sought by the defendants alongwith Exhibit 82, which consumed 7 years in the adjudicatory process.

7. Learned Advocate for the petitioner points out the 7/12 extract at page No.39 to indicate that the Gat No. actually could be 5 and not 1. Learned Advocate for these 3 defendants submits on instructions that if they have fumbled on the actual gat no., they would face the consequences in the suit. It is further stated on instructions that no further amendment will be asked for in this matter and in the event these defendants pray for any amendment, the same could be dealt with by the appropriate Court by imposing heavy costs.

8. Notwithstanding the above, I find merit in the submissions of the learned Advocate for the petitioner that when the gat no. was corrected, these defendants should have corrected the boundaries in

the same application Exh.82. They have consumed 7 years of litigation time and the plaintiff has suffered the rigours of litigation.

9. Considering the above, though the impugned order dated 06/01/2018 is sustained to the extent of the amendment permitted, the costs granted by the Trial Court are enhanced to 15,000/- and each of these 3 defendants shall deposit the total amount of Rs.15,000/- on or before 28/02/2018 in the Trial Court which the plaintiff would withdraw without conditions as costs. No extension of time shall be prayed for by the defendants. Needless to state, if the costs are not deposited, the order permitting the defendants to amend their written statement, would stand set aside w.e.f. 01/03/2018.

(RAVINDRA V. GHUGE, J.)