

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2398 OF 2018

GANGARAM SIDHU KALE
VERSUS
THE RANGE FOREST OFFICER SANGAMNER AND OTHERS

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Advocate for Petitioner : Shri Kanawade Ajay T.
AGP for Respondents 1 to 4 : Shri Tambe S.K.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: March 06, 2018

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PER COURT :-

1. The petitioner is aggrieved by the order dated 17.1.2018, passed by the trial Court, rejecting application Exhibit 44 and refusing leave to the plaintiff to amend the plaint.

2. Learned counsel for the petitioner has strenuously criticized the impugned order. He draws my attention to the six grounds formulated by him in the memo of the petition. He also relies upon the judgments of the Honourable Apex Court in the matter of Abdul Rehman and another Vs. Mohd. Ruldu and others [(2012) 11 SCC 341] and Sajjan Kumar Vs. Ram Kishan [(2005) 13 SCC 89].

3. There can be no dispute that an amendment can be permitted if the same is in conformity with Order VI Rule 17 and the proviso thereunder of the CPC. So also, if the amendment is necessary for the proper adjudication of the suit and does not amount to introduction of a new cause of action or a change in the cause of action set out in the suit, same can be permitted.

4. In the instant case, the petitioner has filed a suit claiming that he is the owner of 2 Hectares forests land. The Forest Department and the State authorities are the defendants. By putting forth such a claim, he intends to seek a declaration that he would be the owner of 2 Hectares of the Forests Land.

5. The trial Court had permitted the appointment of a Court Commissioner, who has submitted his report indicating that in suit property No. 1-B, the plaintiff is actually holding 1 Hectare 16 Ares. It is in the light of these conclusions by the Court Commissioner that the petitioner desires to amend his plaint so as to putforth a contention, which is in tune with the report of the Court Commissioner.

6. The learned AGP appearing on behalf of respondents 1 to 4 submits that the intention of the petitioner to carry out the

amendment is in view of the fact that he is likely to be held an encroacher considering the report of the Court commissioner. To avoid such a conclusion, he seeks to amend the plaint as his act of encroachment is exposed.

7. I find from the record available that on 17.6.2016, the plaintiff has submitted his say on the report of the Court Commissioner that the said report is partly correct and the area in the suit property No.1-B is still 2 Hectares and that is in possession of the petitioner / plaintiff.

8. Considering the above, I do not find that the impugned order dated 17.1.2018 could be termed as being perverse or erroneous. Merely because a second view is possible, the impugned order cannot be interfered with.

9. This petition, being devoid of merits is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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