

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

WRIT PETITION NO. 10025 OF 2018

VASANT LOTAN PATIL AND ANOTHER
VERSUS
BHARATI ASHOK PATIL AND ANOTHER THROUGH GPA ASHOK
BABURAO PATIL

...
Advocate for the Petitioners : Shri Kulkarni Mukul S..
AGP for Respondent 5 : Shri K.S.Patil.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 10th October, 2018

Per Court:

1 The Petitioners, who are the original Defendant Nos.4 and 5, are aggrieved by the order passed by the Trial Court dated 06.07.2018 by which, the application below Exhibit 72 filed by the Plaintiff seeking amendment in the plaint in RCS No.245/2013, has been allowed subject to costs of Rs.2000/-.

2 The learned Advocate for the Petitioners has strenuously criticized the impugned order. Reliance is placed upon the judgment of the Honourable Supreme Court in the matter of *J.Samuel and others vs. Gattu Mahesh and others*, (2012) 2 SCC 300.

3 It is submitted that the Plaintiff has apparently wrongly identified the suit property. The boundaries are wrongly stated. The

description of adjoining owners is also incorrectly stated. Issues were cast on 10.06.2016. The Plaintiff entered an affidavit in lieu of examination-in-chief on 22.11.2016 and is presently in the witness box for cross-examination by the Defendants.

4 The grievance is that the Plaintiff has challenged the mutation entries under the Maharashtra Land Revenue Code, 1966. In the said proceedings, he has correctly described the boundaries, the suit property and adjacent owners. The said mutation entries, which were subjected to challenge, are now being brought on record through the proposed paragraphs under the guise of seeking an amendment. These mutation entries were entered in 1992.

5 Reliance is placed upon the proviso below Rule 17 of Order 6 of the Code of Civil Procedure by contending that when the suit was filed on 23.05.2013, the Plaintiff should have been alert and cautious. He cannot be permitted to correct the boundaries and description of the suit property after five years. So also, the fact that he has approached the Revenue Authorities under the Maharashtra Land Revenue Code, 1966 mentioning correct boundaries and description of the suit property, would indicate that he was not diligent.

6 After considering the strenuous submissions of the learned Advocate and on going through the petition paper book, it is apparent that the description of the suit property has not been correctly mentioned in

the plaint. The boundaries are inaccurate. The proposed paragraphs would indicate that the earlier land Survey No.155/1 was subjected to further division and Gat Nos.155/1A and 155/1B were granted. It is obvious that the suit property has not been properly identified and described in the suit. Even if it is assumed that the suit would be decreed in favour of the Plaintiff, a grave difficulty would occur when he would seek execution of the decree as the suit property would not be properly identified and if somebody else's property is to be considered, it would lead to further complications as those owners would approach the Executing Court for raising objections.

7 In the above backdrop of the fact that the suit property is not correctly described, I find that it would be appropriate to correct the said mistake before it becomes too late. It would serve no purpose if the suit is prosecuted on erroneous description of the suit property. Admittedly, the suit property described is not the actual disputed property and the proposed amendment would identify the correct suit property for which the suit could be entertained in between these litigating sides.

8 The learned Advocate for the Petitioners is right in submitting that when the Plaintiff has already initiated the revenue proceedings under the Maharashtra Land Revenue Code, 1966 by properly describing the suit property, he should have been more diligent while drafting the plaint so as to mention the correct dimensions and description of the suit

property.

9 It is in the above backdrop that the Trial Court has imposed costs of Rs.2000/- on the Plaintiff and has granted the amendment.

10 I do not find that the impugned order could be termed as being perverse or erroneous or likely to cause injustice to the Petitioners. By compensating these Petitioners with costs and obviously with liberty to file additional written statement being permissible in law, I do not find any reason to cause any interference in the impugned order. This Writ Petition being devoid of merit is, therefore, dismissed.

11 The copy of cross-examination, which was inadvertently not placed on record, is taken on record at pages 44-A and 44-B.

kps

(RAVINDRA V. GHUGE, J.)