

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

WRIT PETITION NO. 10612 OF 2018

LAXMAN TATYARAO BHAGAT
VERSUS
KACHRUSING RAMSING CHUNGDE THROUGH LRS SHIVSING
KACHRUSING CHUNGDE AND OTHERS

...
Advocate for the Petitioner : Shri Godhamgaonkar P.G..
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 15th October, 2018

Per Court:

1 The Petitioner/ original Defendant challenges the order passed by the Trial Court dated 25.01.2018 by which, the application Exhibit 13 filed by the Plaintiff in RCS No.718/2016 seeking an amendment under Order 6 Rule 17 of the Code of Civil Procedure, has been granted.

2 The learned Advocate for the Petitioner has strenuously criticized the impugned order. The contention is that the basic structure of the suit has been altered. The cause of action is being sought to be altered. The Plaintiff has casually drafted the plaint. An irreparable loss would be caused to the Defendants, if the said amendment is granted. Reliance is placed upon the judgment of the Honourable Supreme Court in the matter

of *Alkapuri Cooperative Housing Society Ltd. vs. Jayantibhai Naginbhai*, AIR 2009 SC 1948.

3 I find from the record that the Plaintiffs have preferred the suit in 2016 seeking mandatory injunction for removing illegal and unauthorized construction of the Defendants on a particular plot in village Banewadi, Taluka and District Aurangabad. The plot was identified as CTS No.19002. The Petitioner/ Defendant filed his written statement and resisted the suit. It was specifically mentioned in the written statement that CTS No.19043 has been mistakenly quoted as CTS No.19002 and for this reason, the suit deserves to be dismissed as the incorrect plot number has been mentioned. This written statement was filed on 24.03.2017.

4 After going through the Written Statement, the Plaintiffs preferred Exhibit 13 on 02.08.2017 conceding that a mistake was committed in mentioning the number of the suit plot and erroneously somebody else's property has been mentioned as the suit property whereas, the Defendant has illegally carried out construction on CTS No.19043.

5 It is obvious that the Plaintiffs realized their mistake of misquoting wrong plot numbers. It serves nobody's purpose in allowing the suit to proceed on erroneous mentioning of the suit property thereby, impleading wrongly somebody else's property. The suit is bound to be rejected on this count. The suit is just two years old. The application for

correcting the plot number has been filed promptly.

6 In the above set of facts, I do not find that the Trial Court has committed any error in granting leave to the Plaintiffs to amend the plaint by mentioning the correct number of the plot. This Writ Petition being devoid of merit is, therefore, dismissed.

kps

(RAVINDRA V. GHUGE, J.)