

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9500 OF 2014

VIJAYA @ JAYASHRI SUSHILABAI VIRPANKAR
VERSUS
SUSHILABAI RUMBAL VIRPANKAR AND OTHERS

...

Advocate for Petitioner : Shri Sangeet L.R.
h/f Shri Smt. Sangeet Minakshi L.
Advocate for Respondents 1-A-1 to 1-A-5 : Shri Deshmukh A.I.
Advocate for Respondent 3 : Shri Kulkarni Mukul S.

...

CORAM : RAVINDRA V. GHUGE, J.
Dated: October 31, 2018

...

PER COURT :-

1 The petitioner / original plaintiff is aggrieved by the order dated 1.9.2014, passed by the trial Court, thereby rejecting application Exhibit 107 seeking an amendment to the plaint in RCS No.286 of 1996. Grievance is that by oversight, the house property bearing CTS No. 2270/A/B/C was typed as 2070/A. Since it was a minor error owing to a typing mistake, it went unnoticed. The moment the plaintiff noticed the said mistake, an application was filed on 12.8.2014 at Exhibit 107 and it was prayed that the correction be permitted. By the impugned order, the trial Court has rejected the said request on the ground that the correction in the survey number would change the identification of the suit property.

2 Shri Kulkarni, learned Advocate has strenuously opposed this

petition. Contention is that a completely different property will now be a subject matter of the suit and as such, the trial Court was right in refusing the amendment. He further submits that due diligence has not been sufficiently explained and therefore, no interference is called for.

3 I find from the record that after the plaintiff realized the typing mistake, a correction was sought so as to ensure that the suit property is rightly identified by the city survey number. The suit property bearing No.2070/A is not at all in the picture and from the pleadings it would appear that the plaintiff desires to identify the house property, which has given rise to the dispute between the litigating sides. It is nobody's case that the property CTS No.2070/A could be said to be actually the property for which the suit has been instituted.

4 No doubt the correction, if permitted, would identify a different property. But it cannot be ignored that it would, therefore, result in a proper identification of the disputed property for which the litigating sides are before the Court. If the suit proceeds on a wrong city survey number, multiple problems would arise at the level of execution proceedings, if the plaintiff succeeds because somebody else's property would be the subject matter of the execution when, neither the plaintiff lays a claim to that erroneously described property, nor do the defendants stake any claim to the said property.

5 In my view, in such matters, the Court is expected to take a pragmatic view rather than resorting to a pedantic approach.

6 In view of the above, this petition is allowed. The impugned order dated 1.9.2014 is quashed and set aside. Exhibit 107 is allowed. The plaintiff shall carry out the amendment on/or before 30.11.2018. A freshly typed copy of the plaint is not necessary as the said correction can be conveniently carried out in the memo of the plaint.

7 Considering that the suit was lodged in 1996 and is 22 years' old, the trial Court shall decide RCS No.286 of 1996 on/or before 30.4.2019 with the cooperation of the litigating sides. The trial Court shall accord high priority to this matter and shall refuse adjournments if are sought on unreasonable and trivial grounds.

(RAVINDRA V. GHUGE, J.)

...

akl/d