

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

WRIT PETITION NO. 10253 OF 2013

Smt. Santabai w/o Panditrao Sherkar
Age : 55 years, Occu: Household,
R/o Langot Galli, Tq. & Dist. Parbhani .. Petitioner

versus

1. Bhaskar s/o Dattarao Langote
Age 50 years, Occu : Business,
R/o. Langot Galli, Tq. & Dist.
Parbhani
2. Kamlabai w/o. Dattarao Langote,
Age 70 years, Occu: Household,
R/o as above
3. Bhagubai w/o Baburao Langote,
Age 60 years, Occu : Household,
R/o as above
4. Dr. Balasaheb s/o Dattarao Laongte,
Age 40 years, Occu : Doctor,
R/o Milan Azad Road, Behind
Puri Hospital, Langot Galli,
Tq. and Dist. Parbhani .. Respondents

Mr Vishant P. Kadam, Advocate for petitioner
Mr M. M. Patil (Beedkar), Advocate for respondents

CORAM : SUNIL P. DESHMUKH, J.

DATE : 9th October, 2018

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned counsel for parties by consent.

2. Petitioner is before this court taking exception to order dated 28-11-2013 passed by learned 5th joint civil judge, junior division, Parbhani, rejecting application Exhibit - 64 of plaintiff in regular civil suit no. 216 of 2011, seeking correction in description of boundaries of suit property, by its survey number instead of gut numbers.

3. Petitioner is plaintiff in regular civil suit bearing no. 216 of 2011. She had instituted said suit against the defendants seeking restraint on them not to cause interference in land bearing survey number 270/6 admeasuring 1 hectare 31 aar situated at Parbhani. While giving description of boundaries of aforesaid property in claim as well as prayer clause in the plaint, reference to the boundaries has been made by "*gut number*" rather than "*survey number*". While the suit went on and had reached stage of evidence by plaintiff, having realized that description of the boundaries of the property is given by gut number in stead of survey number, an application at Exhibit - 64 had been moved after cross examination of the plaintiff was over. Said application has been rejected under order impugned, considering that there is no due diligence in making said application and the same has been made after commencement of trial. It has further been considered that change in

boundaries would change nature of subject matter of suit. A supreme court decision in the case of *J. Samuel and others vs. Gattu Mahesh and others*, reported in 2012 (4) *Mh.L.J.* 40 has also been referred to and excerpt from the same has been quoted in paragraph no. 6 of impugned order.

4. Learned counsel for petitioner submits that the petitioner – plaintiff is an age-old household agriculturist. She is being vexed over a piece of property bearing survey number 270/6 and as such had been constrained to institute proceedings. While giving description, she has referred to suit property by survey number and it was not noticed by her description of boundaries of land has been inadvertently referred to by gut number instead of survey number. So is the position with prayers in suit as same mistake has been repeated in prayer clauses.

5. He submits that while suit property has been referred to by survey number, adjoining lands also need to be considered and referred to by their survey numbers, however, while amended plaint came to be drafted, this discrepancy creeping in, in the boundaries had not been realized and when it was realized, immediately application Exhibit – 64 had been moved.

6. He further submits, the trial court appears to have been bogged down by proviso to order VI, rule 17 of the Code of Civil Procedure, 1908. He submits that from decision in the case of *J Samuel (supra)* from its excerpt which has been quoted in paragraph no.6 of impugned order refers to that it is the discretion of the court. In the present case it ought to be considered that the plaintiff who is a woman and household agriculturist has had no exposure to English language and even the plaint had been drafted in English and such a mistake had not been realized. While it was pointed out, the mistake is sought to be corrected and as such it cannot be said that there had been no due diligence. He submits that in present case pedantically due diligence shall not be stretched to correction of such mistake, for, the same apparently has been a mistake under oversight at all stages while general tendency of human being is to give importance to the substance in the progress of the matter and in present case, such a mistake had not come to the notice before examination of the plaintiff.

7. He submits that under the garb of change in nature of suit if mistake is not allowed to be corrected, the very purpose underlying it may be getting nullified. He submits that there is no change in the nature of claim in the suit after correction sought for. It is only the description of the boundaries of the

suit property is being corrected. Suit property remains the same i.e. survey number 270/6 and area as well. He, therefore, submits that proper and lenient view be taken protecting cause under the suit.

8. On the other hand, Mr M. M. Patil (Beedkar) appearing on behalf of respondents – defendants submits that it is difficult to consider that at such a belated stage, mistake has been realized. In the interregnum, plaint had already suffered amendments but on those occasions this mistake if at all is not corrected. Aforesaid is an eloquent indication of lack of due diligence. He submits that trial has already commenced and plaintiff has been cross examined. He submits that under the garb of mere change in description of boundaries of suit property, whole subject-matter of the suit would undergo change and as such there would be change in the nature of the suit as rightly appreciated by the trial court. He submits, the trial court has relied on decision of the supreme court. Mr Patil refers to that that there is no particular reason given in the application as to why amendment has been sought.

9. Having heard learned counsel as aforesaid, it emerges that while the suit had been instituted disputed property is referred to by survey number, however, boundaries of suit

property have been referred to by gut numbers and not by survey numbers. Suit property admeasures about 1 hectare, 31 aar. It is not the case on either side that the lands adjoining suit land subsist with gut numbers and not survey numbers. It is also to be taken into account that the plaintiff is a woman and a household agriculturist and is not exposed to and acquainted with English language. The plaint incidentally has been drafted and lodged in English. Application for amendments had also been in English. Written statement is in English. It is nobody's case that the plaintiff is a literate and educated lady. It would also occur that merely by change in description of the land to be referred to by survey number, the suit land as referred to in the claim clause is not being altered. The mistake appears to be inadvertent and under oversight which should receive its due. Further, correction sought would in later stage of litigation obviate procrastination of litigation on that count.

10. It may have to be referred to that *J. Samuel's* case (supra) had been in the background where the plaintiff had omitted to aver about the mandatory pleadings of readiness and willingness pursuant to 16(c) of Specific Relief Act and the amendment had been sought way down when the arguments were completed and the matter had been posted for judgment. Supreme Court in said case has further observed that it was not an omission to

mention a word or arithmetical number and omission was with reference to specific pleading which is mandated under provisions of section 16(c) of the Specific Relief Act. It is in that context, the supreme court had considered in that case, there has been stark absence of due diligence. The supreme court in that case had observed;

" In the given facts there is
clear lack of ' due diligence ' "

It may also be pertinent to note that the supreme court has also observed in said case that at times, court is required to permit parties to amend complaints, albeit two conditions be observed, one, no injustice would be caused to other side and second, it must be necessary for the purpose of determining question in controversy between the parties.

Supreme court had also observed that primary object of the court is to deal with the case on merits and ensure that rule of justice prevails.

Observations of supreme court in *J. Samuel's* case are emanating from factual background involved in the case before it wherein there had been an omission to take up mandatory plea under a substantive statute. Pleadings were sought to be amended when suit had been posted for judgment.

11. Factual background in present matter is widely apart and analogy from observations of supreme court judgment in aforesaid case would not in the circumstances impede object underlying amendment sought in present proceedings.

12. In view of aforesaid, I am inclined to allow writ petition subject, of course, to costs of Rs.5,000/- by way of compensation to defendants for inconvenience to them in the process.

13. As such, impugned order dated 28-11-2013 rejecting application Exhibit – 64 is set aside. Said application is allowed subject to payment of costs of Rs.5,000/-. Costs be deposited within a period of eight weeks from the date of receipt of writ of this order in trial court. Suit be proceeded expeditiously and it is expected that the same would be disposed of by the end of financial year 2018-19.

14. Rule made absolute in aforesaid terms.

15. Writ petition is accordingly disposed of.

SUNIL P. DESHMUKH
JUDGE

pnd/-