

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

36 WRIT PETITION NO. 4654 OF 2015

HARIPRASAD BADRIPRASAD PARDESHI
VERSUS
LILABAI MOHANLAL PARDESHI AND OTHERS

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Advocate for Petitioner : Mr. Wani Ruchir S.
AGP for Respondent Nos. 4 and 5 : Mr. S. N. Kendre
Advocate for Respondent No.1 : Mr. S.V. Natu

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CORAM : V. K. JADHAV, J.
DATED : 12th MARCH, 2018

PER COURT:-

1. Heard finally with consent at admission stage.
2. The petitioner/plaintiff has filed an application exhibit 95 in R.C.S. No. 26 of 2009 under Order VI Rule 17 of the Code of Civil Procedure, 1908 for seeking amendment in the plaint. The respondents/defendants have strongly resisted the said application by filing say. The Civil Judge, Senior Division, Nandurbar, by the impugned order dated 22.09.2014 passed below exhibit 95, has rejected the said application. Hence this Writ Petition.

3. The learned counsel for the petitioner/plaintiff submits that earlier to the application exhibit 95, the petitioner/plaintiff has filed an application for incorporating the relief of recovery of possession in the plaint. The said application came to be rejected by the trial court. Thus, the petitioner/plaintiff has approached this Court by filing a Writ Petition and this Court has permitted the petitioner/plaintiff to withdraw the said Writ Petition with liberty to file application seeking identical relief before the trial court. Accordingly, the petitioner/plaintiff has filed the application exhibit 95. The learned counsel submits that the petitioner/plaintiff has instituted the suit for declaration of title and for a decree of perpetual injunction in respect of the suit property. The petitioner/plaintiff has specifically pleaded in para no.5 of the plaint that he was in service in another village and at that time, he had given the suit land to the defendants for cultivation only for a limited period. However, the defendants, in collusion with the Revenue officers, got mutated the suit land in their own names. Though the petitioner/plaintiff has tried hard to correct the mutation entries, however, the concerned Talathi and the Circle Inspector have not given response to his request. The learned counsel submits that on the basis of certain facts

specifically pleaded in para 3 of the plaint, the petitioner has asserted his right in respect of the suit property as an owner thereof and in that capacity, further claimed that he is the person who can enjoy the suit property alone. The learned counsel submits that even though a specific pleading is there, the relief about recovery of possession was not sought. The learned counsel submits that the proposed amendment would not change the nature of the suit in any manner and no prejudice is likely to be caused to the respondents/defendants in any manner. The learned counsel submits that the trial court has rejected the application exhibit 95 on the ground that the trial has commenced and the petitioner/plaintiff could not satisfy the court that despite due diligence, the application for amendment could not be filed on the earlier occasion.

4. The learned counsel for respondent no.1/defendant submits that hearing of the suit was already commenced. The evidence of the plaintiff was recorded way back in the year 2011 at exhibit 55. There are no reasons given in the application exhibit 95 as to what prevented the petitioner / plaintiff from

carrying out the said amendment before framing of the issues and before recording his evidence. The learned counsel submits that the proposed amendment changes the nature of the suit as well as it causes prejudice to the defence of the respondents/defendants.

5. The learned counsel for the respondents/defendants, in order to substantiate his contention, placed reliance on the decisions in the following three cases:

1. ***Rajkumar Gurawara (Dead) Thr. L.Rs. Vs S.K.Sarwagi & Co. Pvt. Ltd. & Anr.***, reported in ***(2008) 14 SCC 364***,
2. ***Ajendraprasadji N. Pande & Anr. Vs Swami Keshavprakeshdasji N. & Ors.***, reported in ***(2006) 12 SCC 1*** and
3. ***J. Samuel & ors. Vs Gattu Mahesh & ors***, reported in ***(2012) 2 SCC 300***.

6. On careful perusal of the pleadings in the plaint and the contents of the application exhibit 95, it appears that there is a specific pleading by the petitioner/plaintiff in para 5 of the

plaint. Even in para 3, on the basis of certain facts, the petitioner/plaintiff has asserted his rights in respect of the suit property as an owner thereof and further pleaded in the same para that in the capacity as owner, he is entitled to enjoy the suit property. It further appears that even though specific pleading is there, the relief of recovery of possession is not incorporated in the prayer clause. It is true that the petitioner/plaintiff has filed the application after commencement of trial, however, considering the nature of the proposed amendment, the trial court should have allowed the application exhibit 95. The proposed amendment would not change the nature of the suit in any manner and I do not think that prejudice is likely to be caused to the respondents/defendants in any manner since the petitioner has created a factual foundation in the original plaint itself for seeking a relief of recovery of possession.

7. In view of the above, I proceed to pass the following order:

ORDER

I. The Writ Petition is hereby allowed.

II. The impugned order dated 22.09.2014 below exhibit 95 in R.C.S. No.26 of 2009 passed by the Civil Judge, Senior Division, Nandurbar, is hereby quashed and set aside.

III. The application exhibit 95 is allowed in terms of its prayer clause, subject to costs of Rs.2,000/- (Rupees two thousand only) to be paid within a period of four weeks from today before the trial court.

IV. The Writ Petition is accordingly disposed of. In the circumstances, there shall be no order as to costs so far as disposal of this Writ Petition is concerned.

(V. K. JADHAV, J.)

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