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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3153 OF 2017

Mushtakeem Mohamed Haroon ... Petitioner
V/s.
Nathmal Sitaram Maniyar ... Respondent

**ALONGWITH
CIVIL APPLICATION NO.47 OF 2018
IN
WRIT PETITION NO.3153 OF 2017**

Nathmal Sitaram Maniyar ... Applicant.
V/s.
Mushtakeem Mohamed Haroon ... Respondent

Mr. Abdul R. Shaikh, for the Petitioner and for
respondent in Civil Application.
Mr. N.R. Bubna, for the Respondent and for applicant in
Civil Application.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 22nd MARCH, 2018.

P.C. :

1] Heard learned counsel for the petitioner and learned
counsel for the respondent.

2] By this petition, filed under Article 227 of the Constitution
of India, the petitioner is challenging the order dated 14.2.2017,
passed by Civil Judge Senior Division, Malegaon below the
Application Exh.35, filed in Special Civil Suit No.39 of 2014.

3] Application at Exh.35 was filed by the petitioner, who is plaintiff before the trial Court, for amendment of the plaint under Order VI Rule 17 of the Code of Civil Procedure.

4] The suit filed by the petitioner is for specific performance of the agreement dated 27.1.2012. During the pendency of the suit, lay out plan of the suit property is sanctioned by Malegaon Municipal Corporation. In view of the sanctioned lay out plan, the number of the suit plot is changed and therefore, it was submitted that there is need to amend the description of the suit plot, as mentioned in the plaint as “plot No.17”, out of survey No.99/B, to “plot No.11” out of same Survey Number. It is submitted that the area of the plot is also changed. Now area is 611.95 sq. meters and it needs to be brought on record. According to the petitioner, the proposed amendment was necessary in view of subsequent event and also in view of clause No.7 of the agreement which specifically provided that after the lay out plan, plot numbers will be changed.

5] This application, however, came to be resisted by the respondent herein, contending inter alia that the petitioner, since the year 2014, was aware about sanction of the tentative lay out plan and therefore, after the commencement of the trial at this belated stage, petitioner should not be permitted to carry out amendment, which is going to change the nature of the suit property.

6] The trial Court has, after considering the submissions advanced by learned counsel for both the parties, rejected the said application, holding that it is not only going to change the nature of the suit property, but also the area thereof.

7] While challenging this order of the trial Court, submission of learned counsel for the petitioner is that clause No.7 of the agreement specifically provides that as the said agreement was executed on the basis of proposed lay out plan and on the sanction of the lay out plan, the plot number will change and if the plot number is changed, then the sale has to be in respect of the area of the changed plot number. It is urged that now as the lay out plan is sanctioned, it has become necessary to carry out requisite amendment in the description of the suit property.

8] However, as rightly held by the trial Court, the proposed amendment is not only going to change the number of the suit plot, but it is also changing the area of the said plot. As rightly pointed out by learned counsel for respondent, the clause No.7 of the agreement specifically provides that even if the plot number is changed after the lay out plan is sanctioned, the area to be sold will remain the same, it will not change. Hence, the amendment seeking change in the area of the plot cannot be permitted.

9] Moreover, there is also no question of petitioner suffering

any prejudice, even if the plot number is changed, as the area and location of the plot will be the same. Conversely, if the suit is proceeded as per the proposed lay out plan produced at page No.23 which is dated 25.3.2008, it would be easier for the trial Court to identify the suit plot which is agreed to be sold between the parties so that area, which is agreed to be sold to the petitioners can also be carved out.

10] In view thereof, the impugned order passed by the trial Court does not call for any interference.

11] Accordingly, the writ petition stands dismissed.

12] In view of dismissal of the writ petition, Civil Application No. 47 of 2018 becomes infructuous and the same is accordingly disposed of.

[DR.SHALINI PHANSALKAR-JOSHI, J.]