

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**WRIT PETITION NO.6916 OF 2017**

Vitthal Mhaskuy Mandhre

...Petitioner

vs.

Mugutrao Vishnu Sanas

(since deceased through legal heirs)

...Respondents

Mr. Jaydeep Deo, for the Petitioner

Ms. Sneha Bhange I/b. Mr. Chaitanya Nikte, for Respondent  
Nos.1A to 1D.

**CORAM : M. S. SONAK, J.**

**DATE : NOVEMBER 28, 2018**

**ORAL JUDGMENT**

. Heard Mr. Jaydeep Deo, learned counsel for the  
Petitioner and Ms. Sneha Bhange, learned counsel for the  
Respondents.

2. The challenge in this Petition is to order dated 24<sup>th</sup>  
March, 2017 by which the learned trial Judge has rejected the  
Petitioner's application for amendment of the Plaint. Mr. Deo  
submits that the amendment was only in respect of the description  
of the suit premises. He submits that the amendment was  
necessary as matter of abundant caution so that in future there  
should arise no difficulties in so far as the identification of the suit

properties is concerned. He submits that the amendment of this nature ought to have been allowed considering the law laid down by the Apex Court in the case of **Sajjan Kumar vs. Ram Kishan (2005) 13 Supreme Court Cases 89**. Therefore he submits that the impugned order warrants interference.

3. Ms. Bhange, learned counsel for Respondents point out that the application for amendment was made almost six and half years after the institution of the suit. No steps are taken to amend the Plaint, even though the issue as regards incorrect description of the premises was substantially raised by the Respondents in written statement. She submits that the proviso in Order 6 Rule 17 clearly applies since the trial has already commenced in the suit. She submits that the Petitioner not being diligent, the application for amendment was rejected by the learned trial Court. She submits that this Petition warrants dismissal.

4. In the present case, from the perusal of the application seeking leave to amend itself can clear that the Petitioner wished to carry out the amendment to describe correctly the northern and southern boundaries of suit properties. The Petitioner desires to

describe the southern boundaries of the suit properties as “*part of property No. 88/8B1 Kothrud and then the property of Mr. Bhelke*” in place of earlier description which was “*property of Bhelke*”. In so far as the northern boundaries is concerned, the Petitioner wishes to clarify that the same is “*lane and property of Mr. Sonawane and Kulkarni*” in place of “*lane of Mr. Sonawane and Kulkarni*”.

5. Considering the nature of amendments applied for, the learned trial Judge has clearly erred in declining leave to amend. The amendments were almost formal and intended to place on record the correct description of the suit property.

6. In **Sajjan Kumar** (supra) the Hon'ble Apex Court has held at para 5 and observed thus:

*“Having heard the learned counsel for the parties, we are satisfied that the appeal deserves to be allowed as the trial Court, while rejecting the prayer for amendment has failed to exercise the jurisdiction vested in it by law and by the failure to so exercise it, has occasioned a possible failure of justice. Such an error committed by the trial Court was liable to be corrected by the High Court in exercise of its supervisory jurisdiction, even if section 115 CPC would not have been strictly applicable. It is true that the plaintiff-appellant ought to have been diligent in promptly seeking the amendment in the plaint at an early stage of the suit, more so when the error on the*

*part of the plaintiff was pointed out by the defendant in the written statement itself. Still, we are of the opinion that the proposed amendment was necessary for the purpose of bringing to the fore the real question in controversy between the parties and the refusal to permit the amendment would create needless complications at the stage of execution in the event of the plaintiff-appellant succeeding in the suit.”*

7. In the case of **Sajjan Kumar** (supra) the Plaintiff had applied for leave to amend the Plaint seeking the eviction of the Defendant. The proposed amendment sought correction of the description of the premises in the Plaint. In this case as well the principal ground for opposition was that although the Defendant had taken the plea, the Plaintiff proceeded with the trial of the suit without taking care to seek amendment at early stage. Despite, all these considering the nature of amendment, the Hon'ble Apex Court granted leave to amend.

8. The facts of the present case, are no different. Accordingly, the impugned order is liable to be set aside and the application seeking leave to amend, is liable to be granted and the same is in fact granted.

9. Taking into consideration, the fact that the leave to

amend was applied for after considerable delay, this is a fit case to impose cost on the Petitioner. Accordingly, the Petitioner is directed to pay cost of Rs. 5,000/- to the Respondent. Such cost to be paid or deposited within four weeks from today.

10. Amendment to be carried out on payment of cost to the Respondent.

11. Rule is made absolute in the aforesaid terms.

12. All concerned to act on the basis of authenticated copy of this order.

**(M. S. SONAK, J.)**