

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

WRIT PETITION NO. 12620 OF 2017

Minin Inas Kudel @ Cordes	]	
Aged 52 years, Occu.: Service,	]	
R/at Gass, Tal. Vasai, Dist. Palghar	]	<u>Petitioner</u>

V/s.

1. Mingel Anton Kudel	]
Aged 70 years, Occu.: Service	]
R/at Gass, Tal. Vasai, Dist. Palghar	]
	]
2. Smt. Janubai Anton Figer	]
Age 70 years,	]
	]
3. Kispin @ Cirmel Inas Kudel	]
Age 56 years,	]
	]
4. Smt.Pakibai Inas Rumao	]
Age 73 years,	]
	]
5. Smt.Carmelbhai Sajao Figer	]
Age 67 years,	]
	]
6. Mingel Ludrik	]
Age 66 years,	]
	]
7. Royal Mingel Ludrik	]
Age 41 years,	]
	]
8. Sajay Mingel Ludrik	]
Age 39 years,	]

	]	
9. Anand Mingel Ludrik	]	
Age 34 years,	]	
	]	
10. Nilam Mingel Ludrik	]	
Age 34 years,	]	
	]	
11. Smt.Prejeta Figer	]	
Age 61 years,	]	
	]	
No.1 and 2 R/at Gass,	]	
No.3 and 4 R/at Gass Kandok No.2	]	
No.5 and 11 R/at Gas Wadi	]	
No.6 to 10 R/at Gass Lahan Sargodi,	]	
Post Sopara, Tal. Vasai, Dist.Thane.	]	<u>Respondents</u>

- Mr.A.J. Almeida for the Petitioner.
- Mr.Sunil G. Karavdikar for the Respondents.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 8th JANUARY, 2018.

ORAL JUDGMENT :

1] Rule. Rule made returnable forthwith. Heard finally with the consent of learned counsel for the Petitioner and the Respondents.

2] By this Writ Petition filed under Article 227 of the Constitution of India, the Petitioner is challenging the order dated 23rd September, 2017 passed by the District Judge-2, Vasai below Exhibit-31

in Civil Appeal No. 8 of 2013. The said application was filed by the Petitioner, who is original Defendant No.1 in the suit seeking amendment in the written statement on the count that he wants to clarify certain facts to bring on the record as to how the suit property belongs to him and not to the Respondents-Plaintiffs alone.

3] This application for amendment, however, came to resisted strongly by the Respondents-Plaintiffs and the Appellate Court has vide its impugned order rightly rejected the said application on the count that by the proposed amendment, the Petitioner is withdrawing the admission, which is earlier given by him in the written statement about ownership of the Respondents-Plaintiffs over the suit property.

4] While challenging this order of the Appellate Court, the submission of the learned counsel for the Petitioner is that, the Petitioner is not withdrawing the amendment but only clarifying and explaining the admission, which is given by him in the written statement about the ownership of the Respondents-Plaintiffs; and such amendment for the purpose of explaining or clarifying the admission is permissible. In support of his submission, learned counsel for the

Petitioner relies on the judgment of the Apex Court in the case of *Ram Niranjan Kajaria vs. Sheo Prakash Kajaria & Ors.*[(2015) 10 SCC 203].

5] The facts of the present case, however, reveal that in the written statement in paragraph No.(2), the Petitioner has categorically admitted the fact that the suit property belongs to the Respondents. However, now by way of amendment in the written statement, the Petitioner wants to contend that the boundaries of the suit properties which were given in the plaint do not tally with the property owned by the Respondents-Plaintiffs and therefore, now it is necessary to carryout this amendment.

6] However, as rightly held by the Appellate Court, when the Petitioner has in the written statement clearly and categorically admitted the ownership of the Respondents-Plaintiffs over the suit property, then now by way of amendment, he cannot, on the pretext that he wants to clarify or explain such admission be permitted to carryout such amendment and that too after the suit is decreed. By seeking such amendment the Petitioner wants to remand the matter, as can be seen from the prayer clause in the application.

7] It is pertinent to note that the Appellate Court has already rejected the Petitioner's earlier application filed under Order-41 Rule-27 of the Civil Procedure Code for producing additional evidence. Without making reference to the said application or order passed thereon, the Petitioner is now indirectly seeking the production of additional evidence by carrying amendment in the written statement. Therefore, the Appellate Court has after considering everything before it, rightly rejected the Petitioner's application.

8] The impugned order passed by the Appellate Court, therefore, being just, legal and correct; no interference is warranted therein. Writ Petition being without merits, stands dismissed.

9] Rule discharged.

[DR.SHALINI PHANSALKAR-JOSHI, J.]