

vks

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

WRIT PETITION NO.2542 OF 2018

Ijaj AbdulHamid Shaikh	...	Petitioner
V/s.		
State of Maharashtra and		
ors	...	Respondents

Mr. Prabhanjan Gujar, for the Petitioner.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 20th MARCH, 2018.

P.C. :

- 1] Heard learned counsel for the petitioner.
- 2] By this petition filed under Article 227 of the Constitution of India, the petitioner is challenging the order dated 16.08.2017, passed by District Judge-3, Satara, below application Exh. 27 in Civil Appeal No.7 of 2015.
- 3] Application at Exh.27 was filed by the present petitioner, who is appellant before the Appellate Court, for amendment in the plaint under Order VI Rule 17 of the Code of Civil Procedure, in order to correct the boundaries of the suit properties. It is submitted that due to inadvertence and oversight, wrong boundaries of western and norther side of the suit properties are mentioned, hence in order to

remove technical defect the proposed amendment be allowed.

4] The Appellate Court has after considering the entire material on record and particularly the Proviso to Order VI Rule 17 C.P.C, has rejected the said application. Hence this Writ Petition.

5] In support of his submission, learned counsel for the petitioner has relied upon the judgment of Apex Court in *Sajjankumar -vs- Ram Kishan* [(2005) 13 SCC 89], wherein the proposed amendment was sought at the final stage of suit for correction in the boundaries of the suit properties and it was rejected. The said order was confirmed by the High Court. Hon'ble Supreme Court has held that such amendment should have been allowed to prevent possible failure of justice.

6] It is pertinent to note that in the said case the amendment was sought when the suit was at the final stage; whereas the amendment in the present case is sought at the appellate stage.

7] It is pertinent to note that the suit was filed in the year 2008. The measurement therein was also carried out in the year 2010 and thereafter the suit came to be decided in the year 2015 and in the judgment the trial Court has also observed about not mentioning the correct boundaries of the suit property. Especially in a suit for removal of encroachment, when the petitioner is seeking change in the boundaries at the Appellate Stage, then as rightly observed by the

Appellate Court, it is not only at the belated stage but in this case the Proviso to Order VI Rule 17 C.P.C. squarely comes into play. It lays down that when the application for amendment of the pleadings is filed after commencement of the trial, the Court has to come to the conclusion that in spite of due diligence such amendment could not have been sought earlier. In this case there is no such averment about exercise of due diligence sans thereof application for amendment cannot be allowed. It is also going to cause great prejudice to the respondent and hence merely on the count that due to inadvertence, correction in the boundaries remained to be carried out, such amendment application cannot be allowed. The Appellate Court has, therefore, rightly rejected the same.

8] As such, no interference is warranted in the impugned order passed by the trial Court.

9] The writ petition being without merits stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]