

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.3427 OF 2016

Anilkumar s/o Satyanarayan Agrawal  
Aged about 45 years, Occ. Cultivator and  
Business, r/o Geeta Nagar, Bye Pass Road,  
Akola, Tq. and Dist. Akola

... Petitioner

-VS-

1. Mirza Zakaulla Beg s/o Mirza Bazir Beg  
Aged about 58 years, Occ. Builder,  
r/o Gulzarpura, Old City, Akola,  
Tq. and Dist. Akola.

2. Sairandhri d/o Mangaldas Nerkar,  
(Sairandhri w/o Paritosh Sule),  
Aged about 37 years, Occ. Service,  
r/o A-15, The Labournums,  
Near Mozhe Engineering College,  
Balewadi – Pune 411 045.

... Respondents.

Shri C. A. Joshi, Advocate for petitioner.

Respondent No.1 served.

Shri A. R. Deshpande, Advocate for respondent No.2.

CORAM : A.S.CHANDURKAR, J.

DATE : April 23, 2018

P.C.

The petitioner is the original plaintiff who is aggrieved by the order passed by the trial Court rejecting the application for amendment that was moved by the petitioner below Exhibit-116.

2. The petitioner on 14/11/2008 filed a suit for specific performance of agreement dated 14/04/2006. In that suit the parties led their evidence and when the suit was fixed for final arguments the plaintiff moved an application for amendment on 05/02/2016 praying that the boundaries described for the suit properties on the northern side as well as in the agreement of sale dated 14/04/2006 be permitted to be rectified. According to the petitioner there was a mutual mistake on the part of the plaintiff and defendant No.1 in describing the suit property in the said agreement. This fact was noticed after the parties had led evidence and when final arguments were to be made. This application was opposed by the defendant No.2 who is the subsequent purchaser of the suit property. According to defendant No.2 this amendment was not liable to be granted in view of the fact that it was belated and if permitted, the admissions in favour of defendant No.2 as made by the plaintiff would be wiped out. The trial Court by the impugned order rejected the application on the ground that the plaintiff was not diligent in seeking the amendment.

3. Shri C. A. Joshi, learned counsel for the petitioner submitted that there was a mistake in describing the suit property in the agreement as well as in the plaint. The mistake was with regard to the northern boundary of the fields agreed to be purchased. As this mistake was noticed at belated stage

after the parties had led evidence and as the mistake was mutual on the part of the plaintiff and defendant No.1, the agreement ought to be rectified by virtue of provisions of Section 26(1)(b) of the Specific Relief Act, 1963. No prejudice would be caused to the defendants if the amendment was permitted. He further submitted that the defendant No.1 did not contest that application and hence it could be said that he did not oppose the same. The defendant No.2 was not a party to the said agreement and he had no right to oppose the same. It was therefore submitted that the amendment deserves to be allowed.

4. The respondent No.1 has been duly served. Shri A. R. Deshpande, learned counsel for respondent No.2 supported the impugned order. According to him the application for amendment was belatedly moved after the evidence was recorded. He referred to the cross-examination of the plaintiff and submitted that the plaintiff had given various admissions and had also denied that the suit fields were on one side of the road in question. The amendment if permitted would result in wiping out those admissions. He also submitted that defendant No.1 in his reply to the application for injunction had denied the agreement in question and therefore it could not be said that there was a mutual mistake in describing the suit property as urged.

5. The learned counsel for the parties have been heard at length. Perusal of the plaint indicates the boundaries as mentioned in the agreement while describing the suit property. The description with regard to field Survey No.33 and its northern boundary is the subject matter of amendment. It is undisputed that the application for amendment had been moved when the suit was fixed for final arguments. As regards the submission that there was a mutual mistake between the plaintiff and the defendant No.1 in describing the suit property, that contention has rightly not been accepted by the trial Court. The reply of defendant No.1 to the application for mandatory injunction and paragraph two thereof indicates that the defendant No.1 has denied the agreement dated 14/04/2006. Hence in the light of this denial it cannot be said that the defendant No.1 accepted that there was a mistake in describing the suit property.

6. Perusal of deposition of the plaintiff including his cross-examination indicates that the defendant No.2 has cross-examined the plaintiff with regard to description and location of the suit field. If the amendment is permitted at this stage, same would have the effect of diluting the effect of the deposition of the plaintiff. In absence of due diligence on the part of the plaintiff and mere statement that the mistake was noticed after the evidence was recorded would not be sufficient to permit such amendment at a belated

stage. Moreover, if the amendment is allowed, it could affect the defence of defendant No.2.

7. In that view of the matter I do not find that the trial Court committed any error in rejecting the application for amendment. By clarifying that observations made in this order are only for deciding the present challenge and by further observing that the suit shall be decided on its own merits without being influenced by any of the observations made in this order, the writ petition stands dismissed. No costs.

**JUDGE**