

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**WRIT PETITION NO.4865 OF 2018**

**PRADIP BHASKAR PATIL AND ANOTHER  
VERSUS  
BHASKAR BHADU PATIL AND OTHERS**

...  
Advocate for the Petitioners : Shri S. H. Tripathi h/f.  
Shri M. C. Ghode

...

**CORAM : RAVINDRA V. GHUGE, J.**

**DATED : 18<sup>th</sup> JANUARY, 2019.**

...

***PER COURT :***

1. The petitioners, who are original plaintiffs, are aggrieved by the order 04/09/2017 passed by the Trial Court, by which, application Exhibit 32 filed by them seeking amendment to the plaint in RCS No. 98/2017, has been rejected.

2. A strenuous submissions of the learned Advocate for the petitioners is that Exhibit 32 was filed only for putting forth clarifications and to give better details to the Court. The cause of action would not change and no new cause of action has been introduced.

3. It is further submitted that the impugned order is perverse and the Trial Court has failed to note that amendment applications are to be liberally granted.

4. I have perused Exhibit 32 in the light of the submissions of the learned Advocate. The proposed amendment in the first paragraph is not putting forth any explanation or tendering better details to the Court. It is proposed to withdraw a particular admission given by the plaintiffs that defendant No.1 has the possession of 57 R. agricultural land. This statement is sought to be withdrawn and further contentions are sought to be advanced so as to nullify the pleading to the extent of the possession of the said land.

5. In the subsequent paragraphs in Exhibit 32, certain typographical mistakes are mentioned and the Trial Court, by the impugned order dated 04/09/2017, has permitted the amendment to the extent of the insertion of appropriate numbers/alphabets. Clause 2 of the order of the Trial Court indicates the extent to which the amendment is granted.

6. It is settled law that when a party pleads a particular aspect and the respondent filed their written statement, any such statement which is made by way of an admission, cannot be withdrawn. An amendment is not permitted to prejudice the opponents. Once an admission is made and the parties proceed on the basis of the said admission and the opponents enter their pleadings through their written statement, such an amendment withdrawing certain averments/statements made, should not be permitted.

7. In ***Mahendra Radio and Television, Meerut and another Vs. State Bank of India, AIR 1988 All 257***, the Allahabad High Court has held in paragraph 18 as under :-

*"18. The pith and substance of the principles laid down in the aforesaid two decisions of the Supreme Court is that even by means of amendment an admission could be permitted to be withdrawn in a given case if admission is not one which deprives the plaintiff of the valuable right accrued to him. Thus, it is only those admissions where valuable right has accrued to the plaintiff or an amendment which introduces a new case and seeks to displace the plaintiff completely from admissions made by the defendant the*

*amendment should not be permitted. However, where admissions are not such then permitting amendment on the facts and circumstances of case could not be such which could give rise to the other side a cause on which it should be refused."*

8. Considering the above, I do not find that the Trial Court has committed an error in passing the impugned order. The said order does not appear to be perverse or erroneous.

9. This petition, being devoid of merit is, therefore, dismissed.

**(RAVINDRA V. GHUGE, J.)**

shp/-