

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

WRIT PETITION NO.1720 OF 2018

Dattatraya Dhondiram Bikkad,
Age : 72 years, Occupation : Agril,
R/o Fakrabadwadi, Tq.Washi,
District Osmanabad.

...PETITIONER
(Orig.Plaintiff)

-VERSUS-

- 1 Chotumiya Abdul Shaikh,
Age : 62 years, Occupation : Agril.
- 2 Kamalpasha Abdul Shaikh,
Age : 57 years, Occupation : Agril.
- 3 Vazir Abdul Shaikh,
Age : 54 years, Occupation : Agril.
- 4 Takimiya Abdul Shaikh,
Age : 52 years, Occupation : Agril.
- 5 Goremiya Abdul Shaikh,
Age : 52 years, Occupation : Agril.
- 6 Sikandar Abdul Shaikh,
Age : 50 years, Occupation : Agril.
- 7 Mumtaz Abdul Shaikh,
Age : 47 years, Occupation : Agril.
- 8 Mussa Dagdu Shaikh,
Age : 62 years, Occupation : Agril.
- 9 Mohammad Dagdu Shaikh,
Age : 57 years, Occupation : Agril.
- 10 Shaikh Shakila Gulab Shaikh,
Age : 57 years, Occupation : Agril.

- 11 Shaikh Sayrabanu Abbas Shaikh,
Age : 57 years, Occupation : Agril.
- 12 Shaikh Jahir Abbas Shaikh,
Age : 28 years, Occupation : Agril.
- 13 Shaikh Najiya Abbas Shaikh,
Age : 27 years, Occupation : Agril.
- 14 Shaikh Firoz Abbas Shaikh,
Age : 37 years, Occupation : Agril.
- 15 Shaikh Sadiya Abbas Shaikh,
Age : 26 years, Occupation : Agril.

All R/o Nandur (Ghat), Tq.Kaij,
District Beed.

...RESPONDENTS
(Orig.Defendants)

...
Advocate for the Petitioner : Shri Jadhavar Santosh S.
Advocate for the Respondents : Shri Pokale Dnyaneshwar B.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 08th April, 2019

Oral Judgment :

1 Rule. Rule made returnable forthwith and heard finally by the
consent of the parties.

2 While issuing notice on 13.02.2018, I had passed the
following order :-

"1 *The Petitioner/ original Plaintiff is aggrieved by the
order dated 06.10.2017 passed by the Trial Court,
by which, his application Exhibit-67 filed in RCS
No.33/2011 seeking amendment to the plaint for*

correction of boundaries under Order 6 Rule 17 of the Code of Civil Procedure, has been rejected on the sole ground that as the evidence of the Plaintiff has been concluded, he is prohibited from amending the plaint. There is no other reason cited for rejection of Exhibit-67.

- 2 *Issue notice to the Respondents returnable on 28.03.2018.*
- 3 *Copies of the petition paper book for issuance of notices shall be supplied on or before 22.02.2018, failing which, this petition shall stand dismissed without reference to the Court on 23.02.2018.*
- 4 *On the condition that the Petitioner shall deposit an amount of Rs.7500/- (Rupees Seven Thousand Five Hundred) before the Trial Court on or before 08.03.2018, the Trial Court would adjourn RCS No.33/2011 beyond the returnable date in this matter.*
- 5 *If the said amount is not deposited, the ad-interim protection granted today shall stand vacated without reference to the Court on 09.03.2018."*

3 All the fifteen Respondents in this matter have appeared through an advocate, who has strenuously opposed this petition. It is contended that though the suit was preferred in 2011, an application for seeking correction in the description of the boundaries of the suit property Exhibit 67 was filed on 21.06.2017. It is, therefore, submitted that the proviso below Order 6 Rule 17 of the Code of Civil Procedure would bar the filing of such an application. It is further contended that there are hardly any reasons set out in the application as regards due diligence and hence, this writ petition deserves to be dismissed with costs.

4 I find from the record that the recording of oral evidence of

the Plaintiff has concluded. Exhibit 67 has been filed thereafter. The reason cited by the Plaintiff is that he belatedly realized that the boundaries of the suit property had suffered errors in their description in the plaint. It is contended by the learned counsel for the Petitioner that such an error can be corrected in the interest of justice if further complications are to be avoided, before it became too late. There would be multiplicity of the litigation if such correction is not permitted at this stage, inasmuch as, the mistake on the part of the Plaintiff in correctly describing the boundaries of the suit property, would cause an irreparable harm, serious prejudice and manifest inconvenience to the Plaintiff. An agricultural land is at issue, which is the only source for survival of the Plaintiff.

5 I am of the view that such correction of a mistake which has occurred inadvertently, can be permitted. The Plaintiff derives no advantage by the wrong description of the property. If not permitted, it would cause an irreparable harm to the Plaintiff. He would have to proceed with the suit on the basis of the erroneous description of the boundaries. This would neither advance his case, nor can it be appreciated that such suit be permitted to proceed on such erroneous description. Since the Petitioner has approached the Court for an amendment, belatedly, the Respondents can be compensated by payment of costs.

6 In view of the above, this Writ Petition is partly allowed. The

impugned order dated 06.10.2017 is quashed and set aside and the application Exhibit 67 is allowed.

7 The Petitioner shall deposit an additional amount of Rs.7500/- (Rupees Seven Thousand Five Hundred) before the Trial Court, on or before 30.04.2019. Thus, the total amount deposited would be Rs.15,000/-, which the fifteen Respondents in this petition, who have appeared through an advocate, would withdraw unconditionally in equal proportion as costs. If the amount is not deposited, this order shall stand recalled and the impugned order shall stand restored.

8 The Petitioner shall carry out the amendment in the description of the boundaries as per the proposed amendment below paragraph 5 of Exhibit 67, on or before 30.04.2019. A freshly typed copy of the amended plaint shall also be placed on record before the Trial Court, on or before 30.04.2019.

9 Needless to state, the Plaintiff would be at liberty to lead additional evidence to the extent of the amended portion in the plaint, on or before 15.06.2019.

10 Rule is made partly absolute in the above terms.