

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1355 OF 2018

Madhavrao Ramji Jagtap,
Died, through L.Rs.

1. Bharatbai w/o Madhavrao Jagtap
Age 64 years, Occ. H.H. and Agri.,

2. Satish s/o Madhavrao Jagtap
Age 44 years, Occ. Agri.,

3. Sandeep s/o Madhavrao Jagtap
Age 39 years, Occ. Agri.,

All above R/o Walandi, Tq.Deoni,
District Latur.

4. Vandana Bai w/o Rahul Patil
Age 42 years, Occ. H.H.
R/o Jojanoor, Tq. Nilanga,
District Latur.

5. Anuradha w/o Vijay Solunke,
age 34 years, Occ. H.H.
R/o Sonkhed, Tq. Nilanga,
District Latur.

..Petitioners

Versus

Umesh Amrutrao Biradar,
Age 46 years, Occ. Agriculture
and Business, R/o Walandi,
Tq. Deoni, District Latur.

..Respondent

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Advocate for Petitioners : Shri Patil G.N.
Advocate for Respondent : Shri Randir H.P. h/f Shri Shivpuje A.S.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: March 19, 2019

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ORAL JUDGMENT:-

1. Heard the learned counsel for the respective parties.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final hearing.
4. On 6.2.2018, this Court had passed the following order:-

" 1. The petitioners are aggrieved by the order dated 09/01/2018, passed by the Trial Court, by which, application Exhibit 153, filed by the petitioners/defendants, seeking leave to amend the written statement at a fag end of the Trial in the R.C.S. No. 368//2008, has been rejected.

2. Grievance is that the defendants are occupying House no. 705, which was not properly described and identified by the defendants in the written statement that was filed on 07/07/2008. Subsequently, the written statement was amended at Exhibit 40 and yet the said house property was not identified and described by these defendants. Recording of evidence has concluded and hence, the Trial Court has rejected Exhibit 153. Further, grievance is that an irreparable harm and serious prejudice would be caused to these defendants as they might suffer a loss of their

property in the pending suit. Reliance is placed upon the following judgments of the Hon'ble Supreme Court :

- 1. Andhra Bank Versus ABN Amro Bank N.V. & others
[2007 AIR SCW 4466],*
- 2. Surender Kumar Sharma Versus Makhan Singh
[AIR 2009 SC (Supp) 2671],*
- 3. Sajjan Kumar Versus Ram Kishan
[(2005) 13 SCC 89],*
- 4. Sushil Kumar Jain Versus Manoj Kumar and another
[2009 AIR SCW 4441],*
- 5. Abdul Rehman and another Versus Mohd. Ruldu & others
[2012 ALL SCR 2922].*

3. It cannot be ignored that the suit is of 2008 and for the last about ten years, these petitioners have not shown due diligence in describing the said house property, though the written statement was once amended. However, since an immovable property is at issue, the hardships suffered by the plaintiff can be reduced by imposing costs.

4. Issue notice before admission to the respondent, returnable on 16/03/2018. Copy of the Writ Petition paper book for issuance of notice shall be furnished on/or before 15/02/2018, failing which this petition shall stand dismissed without reference to the Court on 16/02/2018.

5. On the condition that the petitioners shall deposit an amount of Rs. 20,000/ in the Trial Court on/or before 28/02/2018, the Trial court would adjourn R.C.S. No. 368/2008, till the returnable date in this matter. In the event,

the amount is not deposited as directed, the adinterim protection shall stand vacated on 01/03/2018, and the Trial Court would then proceed to decide the suit on it's own merits. "

5. The learned Advocate for the respondent has strenuously opposed this petition by contending that the petitioners have been negligent and careless while describing the house property in the written statement. If the house said to be occupied by them bears the Number 705, the defendants should have been specific in the written statement. They had sought an amendment earlier in the written statement and yet they failed to properly describe the house number. At the fag end of the trial, it is contended that the house number was wrongly typed. When the defendants have entered an amended written statement at Exhibit 40, a second amendment should not be permitted. He submits in the alternative that if this petition is being considered, the costs deposited by the petitioners in the trial Court may be granted to the defendant.

6. I find from the record that though the defendants have entered their amended written statement, they had failed to mention the number of the Gram Panchayat house which is 705. The boundaries were also not properly described. However, in the absence of these details, which are decisive and relevant, these defendants are likely

to suffer an irreparable harm since an immovable property is at issue in the suit. A mistake committed and that too inadvertently, would be fatal to the stand taken by the defendants.

7. In view of the above, the petition is allowed. The impugned order dated 9.1.2019 is quashed and set aside and application Exhibit 153 in RCS No.368 of 2008 is allowed with the following directions:-

(A) The petitioners / defendants shall carry out the amendment as proposed in Exhibit 153, on/or before 5.4.2019.

(B) An amended written statement would also be tendered on the same date with a copy to the plaintiff.

(C) The plaintiff shall withdraw the amount of Rs.20,000/- deposited by the petitioners before the trial Court, along with interest, unconditionally.

(D) The litigating sides are at liberty to lead additional evidence only to the extent of the description of the property.

(E) The trial Court shall decide the said suit as expeditiously as possible and in any case on/or before 29.2.2020.

8. Rule is made absolute in above terms.

(RAVINDRA V. GHUGE, J.)

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