

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

927 WRIT PETITION NO.1561 OF 2014

MOHAN WAMAN SHIRSATH  
VERSUS  
JYOTI SACHIN MISAL AND ANOTHER

...

Advocate for Petitioner : Mr.Dharurkar Chaitanya V.

Advocate for Respondent Nos. 1 &2 :Mr.Nimbalkar

Aniruddha A. and Mr. Kanade Angad L.

...

**CORAM : M.S.KARNIK, J.**

**Dated: August 21, 2019**

**PER COURT :-**

Heard the learned counsel for the petitioner.

2. By this petition, the petitioner is challenging the order passed by the Trial Court, rejecting the application for amendment.

3. The petitioner has filed a suit before the Trial Court for the removal of encroachment and for recovery of possession.

4. The issues have been framed. By filing application under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure, 1908, the petitioner has prayed that he may be permitted to amend the plaint by adding following averments.

*"That the present plaintiff wants to amend the matter, after paragraph No. 3 is as under :*

*3-A) That one Kalawati w/o Tukaram Kharade sold land Survey No. 103 situated at Beed Taraf Giram bearing No. 4077 dated 15.10.1987 to various persons out of one Shriram Uttam Kadam purchased plot bearing No. 23 size towards North side length East-West 70 feet and East side breadth South-North 20 feet i.e. total area of plot No. 23 is 70 feet x 20 feet = 1400 Square feet before the Competent Authority.*

*3-B) That Shriram Uttamrao Kadam sold his plot No. 23 to one Babasaheb Shrawan Dhutadmal according to registered sale-deed No. 4497 dated 20.11.1987, he sold out the excess portion to the purchaser Babasaheb Dhutadmal.*

*3-C) That purchaser Babasaheb Shrawan Dhutadmal prepared false D.I.L.R. And T.I.L.R. certificate illegally.*

*3-D) That said purchaser Babasaheb Shrawan Dhutadmal sold this plot No. 23*

*situated in Survey No. 103 to defendant No. 1 Jyoti w/o Sachin Misal bearing sale deed No. 1905 dated 1.10.2011 and she became owner and possessor of said suit property.*

*3-E) That the person who sold the property is not in possession of area 70' x 75' feet, but he is in possession of area 70' x 20', therefore the transaction become illegal".*

5. Defendant No. 1 filed his say and opposed the application for amendment, on the ground that the proposed amendment has nothing to do with the real question in controversy between the parties.

6. The learned counsel for the petitioner assailing the order of the Trial Court, would submit that the proposed amendment is filed immediately after the issues are framed and the said amendment would not change the nature of the suit. It is oral submission of the learned counsel for the petitioner that some averments remained to be made in the plaint pertaining to plot No. 23 from Survey No. 103 and as to the measurement thereon.

7. The learned counsel for respondent supported

the impugned order. According to the learned counsel, application is not tenable. Learned counsel would invite my attention to paragraphs No. 15 and 17 of the plaint. It is specific case of the plaintiff that defendant No. 4 has not purchased any plot by a valid registered sale deed. He invited my attention to paragraph No. 17 of the plaint, wherein it is stated that defendant No. 1 has no title or interest in the plot allegedly purchased by her. It is further averred in paragraph No. 17 that defendant No. 3 did not get any valid title and therefore, defendant no. 1 cannot be held to be owner of the plot allegedly purchased by her.

8. I have gone through the order passed by the Trial Court. The Trial Court has rejected the application on the ground that for the purpose of determining the real question of controversy between the parties, the amendments are not at all necessary. The controversy is in respect of actual area of plot No. 23 from Survey No. 103. The necessary issues for the purpose of determining the real question in controversy between the parties are that whether the plaintiff is the owner of suit property and whether the defendants have made encroachment over his land. Therefore, in the view of the Trial Court, since the proposed amendment is not at all necessary for

determining the real question in controversy, it has rejected the application.

9. In my opinion the application (Exh. 59) deserves to be allowed.

10. The proposed amendment does not change the nature of the suit. By the said application, the plaintiff/petitioner wants to bring on record the area of plot No. 23, Survey No.103. Further details about the transaction pertaining to plot No. 23 are sought to be brought on record. The application if allowed, will not cause any prejudice to the defendants. The defendants have every right to file the additional written statement and to contest the amended plaint.

11. The application thus, deserves to be allowed subject to payment of cost of Rs. 5,000/- (Rs. Five Thousand Only) payable by plaintiff to the defendants.

12. The application is allowed in terms of prayer Clause 'C'.

13. Necessary amendment be carried out in the plaint within 3 weeks from today. Needless to mention

that after amendment is carried out, defendants are at liberty to file additional Written Statement to the amended plaint.

14. The suit being of the year 2012, the parties to co-operate with the Trial Court in expeditious disposal of the suit.

15. The Writ Petition is accordingly allowed and disposed of.

**( M.S.KARNIK )**  
**JUDGE**

mahajansb/