

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.4651 OF 2019

Rajendra s/o Bhimrao More
and another

Petitioners

Versus

Anant s/o Shesherao More & others

Respondents

Mr.S.S.Deshmukh, advocate for the petitioners.

CORAM : RAVINDRA V. GHUGE, J.

DATE : 07th August, 2019

PER COURT:

1 The petitioners, who are original plaintiffs in RCS No.218 of 2015, are aggrieved by the impugned order dated 10.01.2019 by which application Exhibit-74 filed by the plaintiffs, seeking framing of two issues, has been rejected.

2 I have heard the strenuous submissions of the learned advocate for the petitioners and have gone through the petition paper book and the grounds formulated.

3 The plaintiffs have specifically contended in the plaint that the suit property is land S.No.368(A) admeasuring 1 acre 20

gunthas, situated at village Bardapur, Tq. Ambajogai. They claimed to be the owners in view of the registered sale deed dated 18.12.1967. The boundaries of the suit property are specifically described.

4 Defendants No.1 to 4 filed a common written statement contending that the land S.No.368/7 admeasuring 1 acre 20 *gunthas* was owned by the grand father of defendant no.1. In the Consolidation Scheme, the said land S.No.368/7 is converted into a new G.No.1317. The defendants claimed to be in the continued possession of the said land and the present Gut number is 1317.

5 The learned advocate for the plaintiffs frankly submits that it has now been noticed, when this matter was being heard, that S.No.368(A) typed in the plaint should actually be read as 368/7 and it is a typographical error.

6 The grievance of the plaintiffs is that the trial Court has not framed an issue, as to '*whether the defendants proved that the said land S.No.368/7 is now re-numbered as G.No.1317, though it accounts for the said measurement of the land.*' Reliance is placed on Order 14 Rule (1) (3) of the Code of Civil Procedure to

contend that each material proposition affirmed by one-party and denied by the other shall form the subject of distinct issues. Reliance is also placed on sub-rule (4) under Rule 1 that the issues are of two kinds viz. issues of facts and issues of law. The grievance is that the trial Court has not applied its mind to this aspect and Exhibit-74 has been mechanically rejected.

7 It requires no debate that the party which pleads has to prove. The trial Court has framed five issues as follows:

(1) Do the plaintiffs prove that they are owner of the suit property?

(2) Do the plaintiffs prove that they are in possession of the suit property?

(3) Do the plaintiffs prove that they defendants obstructed their possession over the suit property?

(4) Whether the plaintiffs are entitled to the relief as prayed?

(5) What order and decree?

8 The further grievance of the petitioners is that the trial

Court had observed in the impugned order that the burden is on the plaintiffs to prove their claim.

9 In my view, when the defendants have specifically pleaded that land S.No.368/7 is converted into G.No.1317, it is only a matter of identifying the number of the suit property. The revenue record, if placed before the trial Court, would clear this aspect. Moreover, since the defendants have termed the suit property as being land G.No.1317, they have to establish that the suit property no longer remains as S.No.368/7 and is now G.No.1317. For this minor issue, which is based on the revenue records and when the suit property is not disputed, the boundaries are not disputed and measurements are not disputed, no issue is required to be framed, as to whether there is a change in the Survey number or the Gut number.

10 In view of the above, this petition, being devoid of merit, is, therefore, dismissed.

11 Since it is noticed that the plaintiffs erroneously mention the land as S.No.368(A), instead of S.No.368/7, the plaintiffs would be at liberty to approach the trial Court for seeking

a correction of this typographical error.

RAVINDRA V. GHUGE
JUDGE

adb/