

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

WRIT PETITION NO.11232 OF 2018

**VASANTRAO TEJRAO THOTE
VERSUS
NAMDEV TEJRAO THOTE THROUGH LRS ANURADHABAI
NAMDEV THOTE AND OTHERS**

...

Advocate for the Petitioner : Shri Hemant Surve
Advocate for Respondent Nos. 1-A), 1-C), 1-D), 1-F) and 1-G)
: Shri S.C.Arora
Advocate for Respondent Nos. 2, 3, 3-A), 3-B), 3-C), 3-D),
3-E), 4 and 5 : Shri A. V. Patil – Indrale

...

CORAM : RAVINDRA V. GHUGE, J.

DATED : 15th JANUARY, 2019.

...

PER COURT :

1. While issuing notice, this Court had passed an order on 09/10/2018 which reads as under :-

"1. The petitioner/original plaintiff is aggrieved by the order dated 25/07/2018 passed by the Trial Court in Special Civil Suit No. 13/2013, by which, application Exhibit 120 filed by the plaintiff seeking addition of three paragraphs and correction in Schedule 'E' and 'F' in the plaint, has been rejected.

2. Grievance is that the application has been rejected on the ground that due diligence has not

been properly explained. It is submitted that the recording of oral evidence is yet to start.

3. Issue notice to the respondents returnable on 30/11/2018. On the condition that the petitioner would deposit an amount of Rs. 20,000/-(Rs. Twenty Thousand only) before the Trial Court on or before 31/10/2018, the Trial Court would adjourn Special Civil Suit No. 13/2013 till the returnable date in this matter.

4. Humdast is granted on request.

5. Copies of the paper books, for issuance of notices, shall be supplied on or before 22/10/2018, failing which, this petition shall stand dismissed without reference to the Court on 23/10/2018."

2. I have heard the learned Advocates for the respective sides. An affidavit-in-reply has been entered on behalf of the L.Rs. of deceased respondent No.1. It is specifically contended that the proposed amendment contains an elaboration. The crux of the amendment is already pleaded in the plaint and though the proposed amendment does not introduce new facts or a new cause of action, there has been no explanation as to

why the amendment is sought by application Exhibit 120 when the plaintiff himself has entered an affidavit in lieu of examination-in-chief.

3. In the light of the strenuous objections raised by the defendants and the grounds formulated by the petitioner, I have perused the petition paper book and have gone through the pleadings. It does appear from Exhibit 120, to the extent of the introduction of paragraph Nos. 13-B, 13-C and 13-D, that they contain an elaboration. However, the plaintiff appears to be under a serious apprehension that in the absence of the said paragraphs, there could be an argument against the plaintiff that the plaint suffers from insufficient pleadings. Though each of the proposed paragraphs contain a specific event around which the averments are weaved, as no new cause of action is sought to be introduced, I find that the ends of justice would be met by extending fullest opportunity to the litigating sides to put forth their best case.

4. The petitioner has deposited Rs. 20,000/- towards costs in pursuance to the order of this Court. There are 8 (eight)

defendants in the suit out of which 2 (two) defendants have passed away and their L.Rs. are on record. The suit is of 2013 and cannot be said to be very old.

5. In view of the above, this Writ Petition is allowed. The impugned order dated 25/07/2018 passed by the Trial Court is quashed and set aside and application Exhibit 120 is allowed.

6. Needless to state, the typographical error in Schedule 'E' and 'F' where the word "purchased" is inadvertently typed instead of word "sold", shall also be a part of the amendment that is granted.

7. The learned Advocate for the plaintiff submits that he would amend the plaint and tender a freshly typed copy of the plaint post amendment on or before 24/01/2019. The said statement is recorded. The amendment and the freshly typed plaint shall accordingly be placed on record on or before 24/01/2019. The list of witnesses to be examined by the plaintiff would also be tendered on the same date. The defendants are at liberty to enter their additional written

statement pursuant to the amendment if so advised, on or before 08/02/2019. They shall also enter their list of witnesses.

8. The amount of Rs. 20,000/- (Rupees Twenty Thousand only) deposited as costs before the Trial Court shall be withdrawn by the 8 (eight) defendants in equal proportions. The L.Rs. of the two deceased defendants would accept the said amount and then it is left to them to apportion the amount amongst themselves.

9. The learned Advocates jointly submit that Special Civil Suit No. 13/2013 which pertains to the partition and separate possession of ancestral properties be expedited. The Trial Court would endeavour to decide the said suit as expeditiously as possible and in any case, on or before 31/01/2020.

(RAVINDRA V. GHUGE, J.)

shp/-