

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11538 OF 2019

SUREKHA SURYAPRAASH KSHATRIY KAMLU AND OTHERS
VERSUS
SHANKAR MANIKRAO KADAM

Mr.R.H.Mewara, Advocate for the petitioners.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 21/09/2019

PER COURT :

1. The petitioners/original defendants in RCS No.86/2013 are aggrieved by the impugned order dated 25/07/2019 passed by the Trial Court by which application Exh.73, filed by the plaintiff for slightly correcting the suit boundaries, has been allowed.

2. The learned Advocate for the petitioners has strenuously criticized the impugned order. Contention is that the original boundaries, that have been mentioned by the plaintiff in the suit, were considered by the Trial Court while deciding his application for temporary injunction Exh.5. By a detailed order, Exh.5 was rejected on 23/07/2018. Thereafter, a Court Commissioner was appointed, who carried out the measurement of the suit property and submitted his report. Exh.73 is based on such a report and no litigant can be

allowed to amend the plaint on the basis of the report.

3. Reliance is placed on the following judgments :-

[a] *Piraji Hulappa Shrirame and another Vs. Revati Anant Suryawanshi*, in WP No.10126/2019, dated 20/08/2019,

[b] *Nalubai Narayan Shinde and others Vs. Gopinath Dagdu Shinde* [2011(2) Mh.L.J. 991],

[c] *Syed Mushtaque Ahmad s/o Syed Ismail and others Vs. Syed Ashique Ali Khan s/o Haidar Ali* [2011(6) Mh.L.J.334],

[d] *Dnyandeo Vithal Salke and others Vs. Dagdu Kadar Inamdar* [2017(3) Mh.L.J.314],

[e] *Chandrakant Kashinath Dike and others Vs. Smt. Satyabhama Vishwanath Dike and another* [WP No.8877/2013 dated 17/01/2014],

[f] *Dhondiba s/o Bapu Zaware Vs. Santosh s/o Paraji Zaware and others* [WP No.4756/2014 dated 8/12/2014],

4. The petitioners have challenged 3 orders in this petition. The first order is dated 02/04/2014 by which the Trial Court appointed a Court Commissioner. By an order dated 06/03/2017, the Trial Court allowed an amendment. The third impugned order dated 25/07/2019 is as regards permitting the plaintiff to correct the description of the suit boundaries.

5. I am not entertaining this petition to the extent of the

impugned orders dated 02/04/2014 and 06/03/2017, which have already been implemented and executed long time ago. This petition is being entertained only to the extent of the impugned order dated 25/07/2019.

6. I have perused application Exh.73. I find that the plaintiff realized the mistakes that he had committed in describing the suit properties. Vide Exh.73, he sought leave to correct the description of the boundaries of the suit property in view of the report of the Court Commissioner, which throws light upon the exact land occupied by the plaintiff. I do not find that such an order permitting the plaintiff to correct the description of the boundaries in the light of the report available, cannot be faulted. Rather than compelling the plaintiff to proceed with the suit on erroneous description of boundaries, the Trial Court has exercised it's discretion and allowed the plaintiffs to correct the description of the boundaries. I do not find that the impugned order could be termed as being erroneous or perverse.

7. This petition, being devoid of merit, is therefore dismissed.

(Ravindra V.Ghuge, J.)