

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

WRIT PETITION NO. 11638 OF 2019

BABASAHEB RAMNATH PATHADE AND OTHERS
VERSUS
BHANUDAS MADHAV SHIRSATH AND OTHERS

...
Advocate for the Petitioners : Shri S. V. Dixit
Advocate for Respondent No. 1 : Shri S. R. Andhale
...

CORAM : RAVINDRA V. GHUGE, J.

DATED : 04th DECEMBER, 2019

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PER COURT :

1. The Petitioners, original defendants are aggrieved by the order dated 31/07/2019 passed by the Appellate Court, by which, application Exhibit 17 filed by the original plaintiff /appellant, seeking amendment in the plaint in Regular Civil Appeal No. 5/2017, has been allowed.

2. The learned Advocate for the Petitioners has strenuously criticized the impugned order. Contention is that by the amendment, the plaintiffs are altering the description of the suit property. Evidence led before the Trial Court was based on the suit property

description as it stood in the plaint. Regular Civil Suit No. 498/2012 was decided by judgment and decree dated 15/11/2016. There is no explanation in Exhibit 17 as to due diligence and as to what prevented the plaintiff for amending the plaint during the trial.

3. My attention is drawn to the grounds formulated in the memo of the petition and it is strenuously contended that the nature of the cause of action would change.

4. The learned Advocate for the original plaintiff, Respondent No.1 has supported the impugned order.

5. I find from Exhibit 17 that the plaintiff has pointed out some sale instance that has occurred and on account of which the area of land allegedly held by the plaintiff in Gat No. 64/6 has slightly changed. The amendment is sought on the basis of such changed dimensions of the suit land. The Trial Court has permitted the plaintiff to carry out the said amendment in order to meet the ends of justice.

6. Considering the law laid down by the Honourable Apex Court in the matters of ***Syed Yakoob vs K.S. Radhakrishnan & Others, 1964 AIR S.C.477 and Surya Dev Rai v. Ram Chander Rai 2003 6 SCC 675***, every impugned order cannot be interfered with, unless it appears to be perverse, erroneous and likely to cause gross injustice to the aggrieved party. Since I find that the change in the dimensions and descriptions of the suit property is said to be on account of a sale that has occurred, the Trial Court appears to have rightly granted application Exhibit 17.

7. This petition, being devoid of merit is, therefore, dismissed. Needless to state, the Respondents, original defendants would be at liberty to counter the amendment carried out in the plaint since an Appeal is a continuation of the suit.

8. The learned Advocate for the Petitioners requests that the pending Appeal of 2017 be expedited.

9. The learned Advocate for the plaintiff submits that the Appeal has already been expedited by the order of this Court dated 26/09/2019, by which, Writ Petition No. 11640/2019 filed by these Petitioners has been partly allowed. The Appeal is to be decided on or before 31/01/2020.

(RAVINDRA V. GHUGE, J.)

shp/-