

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

WRIT PETITION NO. 4154 OF 2017

1. Tatyarao Yeshwant Landage,
Age 69 years, Occu. Labour,
R/o Hadiabar Zopadpatti, Bhivandi,
Dist. Thane, now residing at
Wanjarkheda, Tq. Dist. Latur.
2. Narayan Yeshwant Landge,
Age 64 years, Occu. Business,
R/o Indira Gandhi Vasahat,
Aundh Pune, Te. Dist. Pune
3. Haribhau Yeshwant Landage,
Age 47 years, Occup. Service,
R/o Mahadev Nagar Garad Chowk, .. Petitioners/
Latur, Tq. Dist. Latur Orig. Plaintiffs

versus

Bhagwat Yeshwant Landage,
Age 44 years, Occup. Agril.,
r/o Wanjarkheda, Tq. Dist. .. Respondents/
Latur Orig. Defendant

Mr R. B. Deshmukh, Advocate for petitioners
Mr S. S. Manale, Advocate for respondent

CORAM : SUNIL P. DESHMUKH, J.

DATE : 7th January, 2019

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned counsel for parties finally by consent.
2. The petitioners have filed regular civil suit bearing no. 852 of 2012 for partition and separation of suit property.
3. Succinctly referred to, it is the case of the petitioners that their joint family members have purchased land bearing gut no. 105 admeasuring 1 hectare, 17 and house property under gram panchayat number 146 situated at Wanjarkheda, taluka and district Latur from two brothers Vishwanath and Hariba, however, while drafting the plaint, it had been missed out on by the plaintiffs that their lawyer had referred to name of vendor as Pandharinath Sadhu Bhise in stead of Vishwanath and Hariba who were the real vendors of the property. Petitioner no. 1 is old person whereas, petitioners no. 2 and 3 are residing outside the location of the suit property for earning livelihood. While that has been realized upon change of lawyer by plaintiffs before evidence of plaintiffs began, names of Harba and Vishwanath were referred to in the affidavit of examination in chief.

Thereafter, the matter proceeded further and plaintiffs' witnesses were cross-examined. Since reference to name of vendor in the plaint is different, the same was sought to be corrected by plaintiffs lodging application Exhibit - 46 which came to be rejected under impugned order dated 08-07-2016 and thus the plaintiffs are before this court.

4. Learned counsel appearing on behalf of respondent states that the application Exhibit - 46 had been moved far too belatedly after evidence had begun and as such amendment has been rightly rejected by trial court having regard to proviso to amended Order VI, rule 17 of the Code of Civil Procedure, 1908 since there is absence of due diligence.

5. Aforesaid submissions on behalf of the respondent are met with by learned counsel for petitioners referring to that the petitioners are illiterate, one is old man and others are residing outside the location of the property and relying on joint family members and information given to the petitioners they had contributed for purchase of the property and, as such, inadvertent mistake had been crept in which is sought to be corrected in accordance with the record. Besides alternations in the names of the vendors, there is no other change sought by plaintiffs. He further submits that reference to correct vendors

has already been made in the affidavit in examination in chief of plaintiffs and the technical snags which are likely to arise, may keep the matter lingering on, on that count. According to him, however, learned judge carried an impression of absence of diligence and has rejected the application in spite of the circumstances earlier referred to.

6. It appears after hearing learned counsel that there is no serious dispute about petitioner no. 1 being old man and other petitioners residing outside village Wanjarkheda where the property is situated and that the petitioners are not literate, and their education levels are not high, is not seriously disputed. The same should receive some due. It appears that while originally plaint had been drafted, mistake appears to have crept in, in making reference to correct names of the vendors. After change of lawyer, the mistake had surfaced and the same is sought to be corrected under application Exhibit - 46. It is further being referred to that no examination or re-examination of plaintiff on this court would be sought.

7. In view of aforesaid, situation can be salvaged by allowing application by imposing costs on petitioners rather than procrastinating the matter on technicalities.

8. Writ petition is allowed in terms of prayer clauses (B) and (C) subject to payment of costs of Rs.1,000/-. Costs be deposited in trial court for onward disbursal of the same to defendants.

9. Rule made absolute in aforesaid terms.

10. Writ petition is disposed of.

SUNIL P. DESHMUKH
JUDGE

pnd/-