

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4164 OF 2019

SAMBHAJI SHANKAR KHOT

)...PETITIONER

V/s.

DATTU BALU KHOT AND ANR.

)...RESPONDENTS

Shri.Sandeep Koregave, Advocate for the Petitioner.

Shri.N.J.Patil i/b. Shri.Akshay Patil, Advocate for Respondent No.2.

CORAM : A. M. BADAR, J.

DATE : 6th NOVEMBER 2019

P.C. :

1 By this petition, the petitioner/plaintiff is challenging the order rejecting his application for amendment of the plaint passed on 22nd September 2017 by the learned Joint Civil Judge, Junior Division, Peth-Vadgaon, as well as the order rejecting the request of the petitioner to review the said order passed on 12th November 2018.

2 Heard finally.

3 The petition is vehemently opposed by the learned
counsel appearing for respondents/defendants by submitting that
in the written statement itself, a plea has been raised that the suit
property is not properly described and it cannot be identified.
Still, according to the learned counsel for respondents/
defendants, due diligence was not shown by the petitioner/
plaintiff by effecting necessary amendment. The learned counsel
argued that in the year 2016, evidence of the parties was over and
the suit was posted for arguments, and at that stage, an
application for amendment came to be moved. As the same was
not moved with due diligence, the said application was rightly
rejected and order rejecting review is also proper.

4 I have considered the submissions so advanced and
perused the material placed on record. The suit is for declaration
that in pursuant to the partition effected between the parties, the
plaintiff as well as defendants are having equal share in the suit

property. Considering the nature of the suit and the relief claimed, it was incumbent on the part of the plaintiff to describe the suit property properly in order to enable the court to pass an executable decree, if an occasion so arises. However, that defect was sought to be cured by preferring an application for amendment of the plaint. By the proposed amendment, the plaintiff attempted to incorporate boundaries of the suit land in the plaint.

5 True it is that the application for amendment ought to have been preferred by the petitioner/plaintiff well in advance, but considering the nature of suit, for effective adjudication of the matter finally, it is necessary to have boundaries of the suit land, in order to make the subject matter of the suit identifiable. In this view of the matter, proposed amendment was necessary. The interest of defendants/respondents herein can be taken care of by imposing some costs on the petitioner/plaintiff. But, at any rate, the proposed amendment needs to be allowed for final adjudication of the civil suit. Therefore, the order :

ORDER

The petition is allowed in terms of Prayer Clause (b) on payment of costs quantified at Rs.5,000/-, payable by the petitioner/plaintiff to respondents/defendants within a period of two weeks from today.

(A. M. BADAR, J.)