

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4660 OF 2019

Aamsiddha M. Lohar .. Petitioner
vs.
Chanppa N. Kumbhar and ors. .. Respondent

Mr. D.S. Patil for the Petitioner.
Mr. P.P. Kulkarni for Respondent No.8.

CORAM : M. S. SONAK, J.
DATE : 16 APRIL 2019.

P.C. :-

- 1] Heard Mr. Patil for the petitioner.
- 2] The challenge in this petition is to the order dated 11th February 2019 by which learned Trial Judge has granted respondents - plaintiffs leave to amend the suit.
- 3] Mr. Patil, learned counsel for the petitioner, submits that the amendment changes the entire nature of the suit. He points out that the unamended suit was restricted only to portion described under letter A, B, C and D forming a part of Survey No. 169. He submits that the petitioner had instituted another suit against the respondents-plaintiffs claiming that there is no portion A, B, C, D insofar as Survey No.169 is concerned. He points out that the petitioner had

filed a suit in respect of property relating to Survey No.173/2B. He submits that as counter-blast, the plaint is now sought to be amended to include some additional portion and further to claim damages of Rs.5 Lakhs. He submits that all these amounts to change in the nature of suit and therefore, the amendment should not have been permitted.

4] Mr. Prasad Kulkarni, learned counsel for respondent No.8, defends the impugned order on the basis of reasoning reflected therein.

5] At the outset, it is necessary to note that the respondents applied for amendment of the plaint prior to the commencement of the trial. Accordingly, the application for amendment was required to be liberally construed and has in fact liberally construed by the Trial Court.

6] In the present case, it cannot be said that the nature of the suit has been changed. The suit, continues to be a suit for recovery of possession of certain property. In addition,

damages have been claimed by the respondents-plaintiffs. It is the case of the respondents - plaintiffs that the amendment was necessary on account of certain subsequent events which took place during pendency of the suit.

7] At this stage, the Court was not required to and the Court has rightly not gone into the merits of the proposed amendments. The issue as to whether such pleadings are correct or not, whether such pleadings can be ultimately, proved or not are not really relevant. Learned Trial Judge has rightly held that permitting such amendment will not change the nature of the suit but rather, will avoid multiplicity of the proceedings. There is no jurisdictional error in the view taken by the learned Trial Judge.

8] Accordingly, this petition is liable to be dismissed and is hereby dismissed. There shall be no order as to costs.

9] All contentions of all parties on merits are however, kept open.

10] At this stage, Mr. Patil seeks for extension of time to file a written statement to the amended plaint. The petitioner, is granted liberty to file a written statement to the amended plaint within a period of four weeks from the date of service of amended plaint upon the petitioner.

(M. S. SONAK, J.)