

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4525 OF 2017

Moreshwar Bhaskar Mhatre and Ors.

...Petitioners

vs.

Bayobai Ramchandra Gharat
(Since deceased through L.R.s)

...Respondents

Mr. A.S. Patil, for the Petitioners

Mr. A.P. Ranade, for Respondent No. 1.

CORAM : M. S. SONAK, J.

DATE : APRIL 11, 2019

JUDGMENT:

. Heard Mr. Patil, the learned counsel for the Petitioners and Mr. Ranade, learned counsel for the Respondents.

2. Rule. Rule made returnable forthwith with consent of and at the request of learned counsel for the parties.

3. The challenge in this Petition is to the orders dated 4th October, 2016 by which the trial Judge has allowed the Respondents'-Plaintiff to amend their Plaint subject to payment of costs of Rs. 500/-.

4. Mr. Patil, learned counsel for the Petitioners submit that this amendment was allowed at the stage when the matter was posted for final argument. He submits that almost five years prior to Respondents' seeking leave to amend the Plaint, the Petitioners had already pointed that the suit property is not situated in the village Pagote and situated in the village Sheve. He submits that the Respondents however took no steps in the matter. He submits that if the Respondents are allowed to amend the Plaint at this stage, the Petitioners will be directly effected and will suffer serious prejudice. For this reason, he submits that the impugned order is liable to be set aside.

5. Mr. Ranade, learned counsel for the Respondents defends the impugned order on the basis of reasoning reflected therein.

6. He points out that this was a case of clerical error and there is absolutely no prejudice to the Petitioners since the parties proceeded in the matter without any confusion of the identity in the suit property. He therefore, submits that this Petition may be dismissed.

7. The learned trial Judge by the impugned order has only permitted the Respondents-Plaintiff to undergo in the Plaint that the suit property is situated in the village Sheve instead of Pagote. According to me, such amendment was necessitated on account of clerical error in the Plaint. The amendment was necessary to decide the suit in an effective manner and the records in the suit are straight. There is absolutely no case of breach as such because even the Petitioners were aware about right from the beginning that the suit property is in the village Sheve and the Petitioners in fact had pointed out this position. Accordingly, there is no reason to interfere in the impugned order.

8. Mr. Patil, learned counsel for the Petitioners is however right in pointing out that if the Petitioners had pointed the aforesaid error almost five years ago, it was the duty of the Respondents to have amended the Plaint at the earliest. In the present case, the Respondents should have acted with greater diligence. Accordingly, the Respondents are liable to pay additional costs since the costs of Rs. 500/- is too meager.

9. Accordingly, the Petition is disposed of with the following

order:

- (a) The impugned order in so far as it permits amendment is not interfered with.
- (b) The amount of costs are enhanced from Rs. 500/- to Rs. 5,000/-.
- (c) The payment of costs shall not be a condition precedent. However, the Respondents to pay such costs to the Petitioners within a period of four weeks from today.
- (d) If there is any difficulty in payment of costs, the same may be deposited in the trial Court within four weeks from today, from where the Petitioners are at liberty to withdraw the same unconditionally.

10. Rule is partly made absolute.

11. All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)