

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1334/2015

Pramod Gajanan Sankhe

... Petitioner

V/s.

Vijay Balkrishna Dandekar & Anr.

... Respondents

Mr. S. G. Deshmukh I/b. Ramdas A. Shelke for the Petitioner
Mr. Nitin Gangal for Respondent Nos.1 and 2.

CORAM: K.K. TATED, J.

DATED : JANUARY 23, 2019

P.C. :

1 Heard. By this petition under Article 227 of the Constitution of India, the Petitioner - Plaintiff challenges the order dated 15.12.2014 passed by the Jt. Civil Judge, Junior Division, Palghar below Exhibit- 47 in Regular Civil Suit No. 10/2010 rejecting the Application made by the Petitioner for recasting the issues on the basis of the subsequent amendment.

2 The learned counsel for the Petitioner submits that initially the Petitioner - Plaintiff had made an Application for carrying out amendment in the plaint. He submits that the Trial Court, by order dated 13.03.2014 had permitted the Petitioner to carry out amendment. He submits that on the basis of the said order dated 13.03.2014 the Petitioner carried out amendment in the plaint. Thereafter, the Petitioner made an Application below Exhibit- 47 on 25.07.2014 for recasting the issues, particularly

issue No.2 and 3 in view of the amendment in the plaint. He submits that earlier, the issues were framed on the basis of the easementary right. He submits that by way of amendment, the words "easementary right" were deleted from the plaint and therefore, it is necessary to recast the issues. He submits that these facts were not considered by the Trial Court at the time of passing the impugned order. Hence, the Writ Petition.

3 The learned counsel for the Petitioner submits that in the interest of justice this Hon'ble Court be pleased to allow the Writ Petition setting aside the impugned order dated 15.12.2014 and direct the Trial Court to recast issue Nos.2 and 3 as per the prayers made by the Petitioner below Exhibit- 67.

4 On the other hand, the learned counsel for the Respondent - Defendant has vehemently opposed the Writ Petition. He submits that earlier also, the issues were recast twice. He submits that on one or the other ground, the Petitioner is making Applications to prolong the hearing of the suit. Hence, there is no substance in the Writ Petition and same is liable to be dismissed with costs.

5 The learned counsel for the Respondent submits that if this court is inclined to allow the Writ Petition, costs may be imposed on the Petitioner.

6 It is to be noted that in the present proceedings the Application made by the Petitioner for carrying out amendment in the plaint was allowed on 13.03.2014. On the basis of the said

amendment, the Petitioner made Application on 25.07.2014 to recast issue Nos.2 and 3. It is to be noted that issue No.2 reads “whether the Plaintiff proves that he is having easementary right in the said road?”. Similarly, issue No.3 reads “whether the Plaintiff proves that the Defendants have equal right of way to the Plaintiff having easementary right to use it?” In view of the subsequent development, it is necessary to recast this issue as per the Application made by the Petitioner below Exhibit- 57.

7 In view of these facts, I am of the opinion that the Trial Court has erred in rejecting the Petitioner's Application below Exhibit- 47 for recasting the issues. Hence, I am of the opinion that the Petitioner has made out a case for allowing the Writ Petition.

8 Hence, the following order is passed:

- a. Order dated 15.12.2014 passed by the Jt. Civil Judge, Junior Division, Palghar below Exhibit- 47 in Regular Civil Suit No. 10/2010 is set aside.
- b. The Application made by the Plaintiff below Exhibit- 47 in Regular Civil Suit No. 10/2010 for recasting issue Nos.2 and 3 is allowed.
- c. The Trial Court is directed to recast issue Nos.2 and 3 as per the amended plaint and Exhibit-47.
- d. The Writ Petition stands disposed of accordingly.

e. The Petitioner shall pay costs of Rs.1500/- to the Respondents – Defendants immediately.

(K. K. TATED, J.)