

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.14241/2017

Prakash Mande

... Petitioner

V/s.

Raju Jethanand Wahabi

... Respondent

Mr. Prashant Darandale for the Petitioner

CORAM: K.K. TATED, J.
DATED : JANUARY 14, 2019

P.C. :

1 Heard. By this petition under Article 227 of the Constitution of India the Petitioner challenges the order dated 21.03.2017 passed by the Jt. Civil Judge, Junior Division, Khalapur below Exhibit- 63 in Regular Civil Suit No. 52/2015 allowing the Respondent – Plaintiff's Application under Order 6 Rule 17 of the Code of Civil Procedure, 1908 to carry out amendment on the ground that the trial has not begun and because of amendment there is no change in the original prayers of the plaint.

2 In the present proceedings, the Respondent – Defendant filed Regular Civil Suit No. 52/2015 for an order of injunction restraining the Respondent from disturbing their possession in respect of the suit property admeasuring 0.64.5 H from Sy.No.47/1A situated at Ris, Mohopada, Tq. Khalapur, Dist. Raigad. In that proceedings, the Respondent – Plaintiff made an Application under Order 6 Rule 17 of the Code of Civil Procedure, 1908 for carrying out amendment on the basis of the court

commissioner report (Exhibit-58). Same was allowed by the Trial Court holding that the trial has not commenced and the amendment is not going to change the original structure of the plaint. Not only that the Respondent – Plaintiff has not prayed for any amendment in the prayer clauses.

3 The learned counsel for the Petitioner submits that the Trial Court has erred in coming to the conclusion that the Respondent – Plaintiff has made out a case for allowing them to carry out amendment in the Plaint. He further submits that by carrying out amendment, the Respondent wanted to introduce new cause of action and same is not permitted as per the law. Therefore, the order passed by the Trial Court is required to be set aside.

4 It is to be noted that in the present proceedings the Trial Court has specifically recorded that the Respondent – Plaintiff has made the Application under Order 6 Rule 17 of the Code of Civil Procedure, 1908 for carrying out amendment on the basis of the court commissioner's report Exhibit-58 along with map submitted by the Dy. Superintendent of Land Records, Khalapur. Not only that the trial has not commenced and because of the amendment, the structure of the plaint is not going to change. In view of these facts, I do not find any reason to entertain the present Writ Petition.

5 Hence, the Writ Petition stands rejected. No order as to costs.

(K. K. TATED, J.)