

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 10427 OF 2014

Sangli Urban Co-operative Bank Ltd.	]	
Head Office, CTS No. 404,	]	
Khandbaug, through its authorized	]	
Officer Shri Vijayak Krishnrao Phadke,	]	
Occ. : Service, age : 42 yrs.	]	.. Petitioner/
R/o. Sangli	]	(Orig. Plaintiff)

Versus

1. Shri Amrut Vinayak Deshpande,	]	
Age : 70 yrs. Occu. : Trade,	]	
Residing at Vinayak Bungalow,	]	
Near School No.1, Brahmanpuri,	]	
Miraj, Tal. : Miraj, Dist. Sangli.	]	
	]	
2. Shri Sharad Vinayak Deshpande,	]	
Since Deceased by his heirs and	]	
Legal representatives :	]	
	]	
2a. Smt. Sudha Sharad Deshpande,	]	
Age : 78 yrs., Occ : Household,	]	
Residing at Laxmi Sadan,	]	
Bhrahmanpuri at Miraj. Dist. Sangli	]	
	]	
2b. Koustub Sharad Deshpande,	]	
Age : 50 yrs., Occ. : Household,	]	
Residing at Laxmi Sadan,	]	
Bhrahmanpuri at Miraj. Dist. Sangli	]	
	]	
2c. Sou. Snehal Satish Rakthavan,	]	
Age : 51 yrs., Occ. : Household,	]	
Residing at Near Khare Temple,	]	
Bhrahmanpuri at Miraj. Dist. Sangli.	]	
	]	
2d. Sou. Kavita Ajay Chouthai,	]	
Age : 41 yrs., Occ. Household,	]	
Residing at Near Ambabai Temple,	]	
Age : 50 yrs., Occ. : Household,	]	
Residing at Laxmi Sadan,	]	

Bhrahmanpuri at Miraj. Dist. Sangli	]
	]
3. Shri Pratap Vinayak Deshpande,	]
Age : 46 yrs., Occ. Trade,	]
Residing at Kinotic Showroom,	]
Shivaji Road, Near Shivshankar	].. Respondents/
Talkies, Tal : Miraj, Dist. Sangli.	] (Orig. Defendants)

Mr.G.H. Keluskar for petitioner.

Mr.Shriniwas Sudhir Patwardhan respondent Nos.1 to 3.

CORAM : N.J. JAMADAR, J.

DATE : 15TH JULY 2019

ORAL JUDGMENT :

1 Rule. Rule made returnable forthwith and heard finally with the consent of the learned counsels for the parties.

2 By this writ petition under Article 227 of the Constitution of India, the petitioner calls in question the legality, propriety and correctness of the order passed by the learned Joint Civil Judge, Junior Division, Sangli, dated 9th October 2014 on an application for amendment of the plaint in Regular Civil Suit No.669 of 2003, whereby the said application came to be rejected.

3 The controversy revolves in a narrow compass.

The petitioner-plaintiff had instituted a suit against the defendants-respondents for regaining possession of the demised premises, the description of which is given in paragraph 2 of the plaint as, property being

a part of City Survey No.404 and 596 situated at Miraj, Sangli. The respondents-defendants resisted the suit by filing the written statement, wherein, in paragraph 9, a specific contention was raised that the description of the suit property was incorrect. The trial Court framed issues and parties went for trial.

4 After conclusion of the evidence for the plaintiff and when the defendants' witness was under cross-examination, the plaintiff-petitioner preferred an application (Exh.144) for amendment of the plaint under Order VI Rule 17 of the Code of Civil Procedure, 1908. The plaintiff averred that City Survey No.596 came to be inadvertently mentioned as a part of the suit property and there is no controversy over the fact that no part of City Survey No.596 is in possession of the defendants as tenants thereof. Hence, the petitioner sought permission to amend the plaint, so as to delete City Survey No. 596 as a part of the suit property.

5 The defendants resisted the application. The substance of the resistance was that the defendants have taken the defence that the description of the suit property was not correct and the plaintiff was not aware of the precise property which was let out to the defendants, at the earliest possible opportunity. A specific contention to that effect was raised in paragraph 9 of the written statement. Yet, the plaintiff did not amend the plaint. There is a specific bar contained in the proviso to Order VI Rule

17 for permitting the amendment, after the commencement of trial. Thus, the defendants prayed for rejection of the application.

6 The learned Joint Civil Judge, Sangli was persuaded to reject the application on the premise that there was no explanation as to why the plaintiff had not sought the amendment at an earlier point of time. Moreover, since the defendant No.1 raised defence of incorrect description of the said property in the written statement, which was filed in the year 2004, the lack of diligence on the part of the plaintiff was evident. The learned Joint Civil Judge was of the view that, in the circumstances, the amendment cannot be permitted even by imposing costs.

7 It was urged on behalf of the petitioner that the learned Joint Civil Judge has taken a technical view of the matter. It is undisputed that no part of City Survey No. 596 is in possession of the respondents-defendants as tenants thereof. In this view of the matter, the amendment so as to correct the description of the suit property ought not have been declined, urged the learned counsel for the petitioner.

8 In contrast, the learned counsel for the respondents supported the impugned order on the premise that the plaintiff petitioner has brazenly proceeded with the trial despite a specific objection that no part of City Survey No.596 is in possession of the defendants. Thus, at such an

advanced stage of the suit, the amendment was justifiably declined.

9 Indisputably, no part of City Survey No. 596 is in occupation of the defendants. The impugned order records that the witnesses for the plaintiff have categorically admitted that no part of City Survey No.596 is in possession of the defendants as tenants thereof. The only count, on which the prayer for amendment has been rejected, is the delay on the part of the plaintiff in seeking the amendment. It is true that the Proviso to Order VI, Rule 17 of the CPC contains an interdict against permitting amendment after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence the party could not have sought the amendment before the commencement of trial.

10 However, the nature of the amendment sought by the plaintiff cannot be lost sight of. It is trite that all the amendments which are necessary for the determination of real question in controversy between the parties are required to be allowed, provided no prejudice is caused to the other side, which cannot be compensated by costs.

11 In the case at hand, it is incontestable that no part of City Survey No.596 is in possession of the defendants. The description of the suit property, which is allegedly let out to the defendants, is indisputably incorrect. Thus, the property bearing City Survey No.596 is not the subject

matter of the adjudication. In the circumstances, the learned Joint Civil Judge seems to have taken a very hyper-technical view of the matter. No prejudice is likely to be caused to the defendants if the amendment, as sought, is permitted. It is not the case that any right, accrued to the defendants, is sought to be taken away by the proposed correction in the description of the suit property. The aspects of delay in seeking the amendment and the inconvenience caused to the defendants could have been addressed by imposing costs. Thus, the impugned order deserves to be quashed and set aside.

12 Resultantly, the petition stands allowed.

- (i) The impugned order stands quashed and set aside.
- (ii) The application for amendment (Exh.144) stands allowed, subject to payment of cost of Rs.2,500/- by the petitioner-plaintiff to the respondents-defendants, within a period of three weeks from the date of uploading of the order.
- (iii) The petitioner-plaintiff shall carry out the amendment within a period of two weeks after payment of costs.

13 All concerned to act on an authenticated copy of this judgment.

(N.J. JAMADAR, J.)