

BDP-SPS

Bharat
D. Pandit

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 774 OF 2017**

Mr. Kiran Vijay Mone and Anr. Petitioners.

V/s

Mr. Ashok Bhagoji Payelkar & Anr. Respondents.

Mr. Saurabh D. Butala for the Petitioner.

Mr. Laxman Deshmukh alongwith Mr Shyamsundar Solanke i/b Mr.
Pramod N. Patil for Respondent No.1.

CORAM: NITIN W. SAMBRE, J.

DATE: OCTOBER 10, 2019.

P.C.:-

1] Petitioners-Plaintiffs initiated Special Civil Suit No.5 of 2011 for specific performance in which Application-Exhibit-36 came to be moved under Order VI Rule 17 for amendment of the plaint, thereby praying for correction in the details of the suit property. Vide order impugned dated August 12, 2016, the learned Civil Court rejected the said prayer on the ground that if the amendment, as prayed, is permitted, same changes entire nature of the suit. As such, this Petition.

2] Heard respective learned Counsel.

3] The learned Counsel for Respondents-Defendants would urge that (a) the amendment moved is at a belated stage i.e. almost after five years from the date of initiation of the suit, (b) the nature of amendment sought, changes entire nature of the original suit and (c) there is lack of due diligence on the part of the Petitioners-Plaintiffs. He sought dismissal.

4] Though it is contended by the learned Counsel for the Respondents-Defendants that trial in the suit is commenced, as the Petitioners-Plaintiffs have already filed an affidavit-in-examination-in-chief and by relying upon the judgment of the Apex Court in the case of *M. Revanna Vs. Anjanamma (Dead) by Legal Representatives and Others*¹ has claimed that this Court cannot show indulgence in view of proviso to Order VI Rule 17, this Court cannot be oblivious to the fact that the Trial Court has itself made an observation that the trial in the suit has not commenced, though issues are framed. The aforesaid position of fact is not disputed by the learned Counsel for the

¹ (2019) 4 SCC 332

Petitioners.

5] With the assistance of the respective learned Counsel, I have perused the Complaint, a copy of the Agreement based on which suit for specific performance is initiated and the order impugned. In an application for amendment, Petitioners-Plaintiffs have specifically come out with a case that they are restricting their claim to the extent of the area which is mentioned in the suit i.e. 20R as is borne out of the agreement for specific performance. Alongwith Complaint, a plain map is also produced wherein suit property is identified and what is sought to be amended is, only the Plot Number/Gat Number/Hissa Number.

6] The fact remains that the aforesaid correction prima facie appears to be technical, as the nature of the property, as has been identified in the plain map, is not sought to be changed. What is sought to be added by virtue of amendment is only description of the property to the extent of Hissa Number and that too based on the absolute identification of the property for which NA Order appears to be formed to be the basis.

7] In the aforesaid backdrop, the observation made by the learned Court below that too without adhering to the nature of amendment sought in the background of plaint map, appears to be unjustified.

8] As a consequence of above, in my opinion, the order impugned passed below Exhibit-36 is not sustainable. As such, same is quashed and set aside. Application-Exhibit-36 stands allowed, subject to payment of costs of Rs 10,000/- to be deposited in the Trial Court within a period of three weeks from today to which Respondents-Defendants would be entitled to. If the costs, as ordered, is not deposited, it would be termed that the present Petition is dismissed.

9] Considering the nature of suit and the fact that the suit is pending since 2011 i.e. almost for more than eight years, it will be appropriate to order expeditious disposal of the suit.

(NITIN W. SAMBRE, J.)