

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

**WRIT PETITION NO.1430 OF 2018**

**Raosaheb Bhagwan More & Anr.**

**...Petitioners**

**Vs.**

**Balaso Bhagwan More & Others**

**...Respondents**

**Mr. Mahindra Deshmukh, for the Petitioners**

**Mr. Dyaneshwar Deshmukh, for the respondents**

**CORAM : M. S. SONAK, J.**

**DATE : APRIL 18, 2019**

**ORAL JUDGMENT:**

1. Heard Mr. Mahindra Deshmukh for the petitioners and Mr. Dyaneshwar Deshmukh for the respondent Nos.1 and 3, who are the contesting respondents.

2. Mr. Mahindra Deshmukh states that service is complete upon all the respondents. Accordingly, Rule. Rule is made returnable forthwith, with the consent of and at the request of Ld. Counsel for the parties.

3. Challenge in this petition is to the order dated 28/9/2017 by which the Ld. Trial Judge has dismissed the petitioners application for

amendment of the plaint.

4. From perusal of the record, it is seen that the application seeking leave to amend was filed no sooner plaintiffs filed his affidavit in lieu of examination in chief. This means that the application seeking leave to amend was filed after commencement of the trial. The proviso to Order 6 Rule 17 of CPC is accordingly directed in the facts and circumstances of the present case.

5. However, from the nature of proposed amendment, it is apparent that the petitioners' plaint only seeks to clarify that the suit well is located not just in gut No.677 but also in gut No.678. This means that the averment in the plaint after its amendment is to read that the disputed well is located both in gut Nos. 677 and 678.

6. The application seeking leave to amend very clearly states that such amendment is necessary for determining the real issue which arises in the suit and to avoid any further confusion. Taking into consideration the nature of amendment and the fact that such amendment, if allowed, will really assist in adjudication of the real dispute which arises in the suit, the same is required to be allowed, no doubt, subject to payment of substantial cost by the petitioners.

7. Mr. Dyaneshwar Deshmukh, Ld. Counsel for the respondent

Nos.1 and 3, however, points out that allowing such amendment would amount to allowing petitioners / plaintiffs to withdraw admissions. He points out that the suit was instituted on 24/2/2011 and soon thereafter respondent Nos.1 and 3 filed written statement and counter claim on 6/9/2011. In the counter claim, specific plea was raised by respondent Nos.1 and 3 that the well in question is only in gut No.678 and further, the same exclusively belongs to respondent Nos.1 and 3. He submits that if the amendment is allowed, the same would amounts to permitting the petitioners to withdraw the admissions.

8. According to me, this is not a case of withdrawal of admission at all. In any case, though admissions cannot be withdrawn by amending the pleadings, admissions, are always be explained by amending the pleadings. In the present case, we are concerned with the identity of the suit property and its present location. The amendment, if allowed, will indeed assist the Ld. Trial Judge in determining all the issues which arise in the suit.

9. For the aforesaid reasons, the impugned order dated 28/9/2017 is set aside, subject to the petitioners depositing before the Ld. Trial Judge costs of Rs.10,000/- within a period of four weeks from today. If such costs are deposited, respondent Nos.1 and 3 are hereby

granted liberty to withdraw the same unconditionally. However, if no cost are deposited within four weeks from today without seeking any further extension, this petition shall be deemed to have been dismissed with costs of Rs.5,000/-.

10. The Trial Court, in such situation, ensure that such cost are actually paid by the petitioners to respondent Nos.1 and 3 before the petitioners proceed to lead any further evidence in the suit.

11. Rule is made absolute in the aforesaid terms.

12. The petitioners, upon depositing of costs, to carry out amendment to the plaint within a period of two weeks and thereafter serve the copy of amended plaint upon the defendants.

13. In case, the defendants wish to file any additional written statement, they are at liberty to do so within a period of four weeks from the date of receipt of copy of amended plaint.

14. The trial in the suit is expedited and Ld. Trial Judge shall endeavour to dispose of the suit as expeditiously as possible.

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

**(M. S. SONAK, J.)**