

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.14228 OF 2017
with
WRIT PETITION NO.2959 OF 2018

Deepak Namdeo Marke .. Petitioner
vs
Smt Kajal Vasant Mange (Bhanushali) .. Respondent

--

Mr.Dnyaneshwar J.Deshmukh for Petitioner
Mr.Rohan Sawant with Mr.Meet Vora
i/b M/s Navdeep Vora & Associates for Respondent

CORAM : NITIN W. SAMBRE, J
DATE : 11th OCTOBER, 2019

P.C

1. This Petition is by the Defendant in Regular Civil Suit No.88 of 2016 for a declaration and permanent injunction pending on the file of Civil Judge, Junior Division, Karjat.

2. Application Exhibit 33 seeking amendment to the written statement at the behest of the Petitioner came to be rejected by the impugned order dated 25.10.2017. While rejecting said application, the learned Civil Court has observed that the nature of the amendment sought, is unnecessary. Apart from the fact such amendment if granted, changes the nature of defence.

3. I have heard respective counsels.

4. In the present Petition, the Defendant has come out with a plea that the Respondent-Plaintiff has described the suit property incorrectly. The Suit is in relation to the property bearing survey No.10/7B whereas in Exhibit 26 i.e. written statement, property is described as survey no.10/7A. By way of amendment, the Petitioner has tried to strengthen its pleadings so as to establish his case that the Suit property was incorrectly described by the Respondent/Plaintiff.

5. In the aforesaid background, the plea raised by the Respondent-Plaintiff that there is failure on the part of the Petitioner-Defendant to be diligent in filing the written statement, in my opinion, is required to be rejected.

6. For the aforesaid reasons, the order impugned dated 25.10.2017 passed below Exhibit 33 is hereby quashed and set aside.

7. Application Exhibit 33 is allowed subject to payment of costs of Rs.3000/- to be deposited before the Civil Court within four weeks. If paid, the Respondent-Plaintiff will be entitled to withdraw the same.

8. Needless to clarify that the deposit of costs will be condition precedent, for carrying out the amendment to the written statement.

(NITIN W. SAMBRE J)