

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4443 OF 2019

Shri.Rupaji Vithal Dude

Since Deceased Through LRs.

... **Petitioners**

Versus

Shri.Bajirao Sakharam Ghode & Ors.

... **Respondents**

.....

Adv.S.C.Naidu with Adv.Jaymala Ostwal and Adv.Komal Gosavi
i/b. M/s.J.J.Associates, Advocate for the Petitioners.

Mr.T.D.Deshmukh, Advocate for the Respondent No.1 to 6c.

....

CORAM : A.M.BADAR J.

DATED : 7th NOVEMBER 2019.

P.C. :

1 This is a petition by defendant Nos.1(a) to 1(k) challenging the Order dated 10/10/2018 passed by the Civil Judge Junior Division, Ghodnadi, Shirur thereby partly allowing the application filed by respondents/plaintiffs for amendment of plaint by resorting to provisions of Order VI Rule 17 of the Code of Civil Procedure.

2 Hear the learned Counsel appearing for the petitioners. He vehemently argued that the suit was for permanent injunction restraining the defendants from interfering with peaceful

possession of the plaintiffs over Gat No.336 of Taluka Shirur. The learned Counsel further pointed that after rejection of the application for temporary injunction, issues were settled and then first amendment application came to be filed by the plaintiff on 20/07/2011. It was not pressed and subsequent amendment application came to be filed on 14/08/2017. The same was partly allowed by the impugned Order. In submission of the learned Counsel for the petitioner, this Order allowing the application suffers from error of law as test of due diligence for applying for amendment was not considered by the learned trial Court. The proposed amendment changes the cause of action and takes away admissions given by the plaintiffs in their pleadings. The learned Counsel relied on the Judgment of the Honourable Apex Court in the matter of *M. Revanna v. Anjanamma (Dead) By LRs. & Ors.*¹ and submitted that as the amendment sought to be incorporated introduced a totally different and new inconsistent case and as it changes the fundamental character of the suit, the learned trial Court ought to have rejected the said application.

3 The learned Counsel for the respondents/plaintiffs submitted that in fact, similar application was moved earlier and it was not pressed due to technical defects and then immediately second application came to be moved and for taking resort to the provisions of Order VI Rule 17 of the Code of Civil Procedure reserving the leave is not necessary.

¹ S.L.P. (Civil) No.19188 of 2010.

4 I have considered the submissions so advanced and perused the material placed on record.

5 The suit was for permanent injunction. Prayer was to restrain the defendants from disturbing peaceful possession of the plaintiffs over Gat No.336 admeasuring 21 H 42 R as well as *pot kharab* land. During pendency of the suit initially an application dated 20/07/2011 came to be filed seeking amendment in pleadings by the plaintiffs. It was disposed of as not pressed on 05/07/2017 as the plaintiff had endorsed that because of technical and formal defects in the application, he wants to file fresh application. That is how the plaintiff had preferred another application immediately on 14/08/2017. It was partly allowed by the impugned Order by permitting the plaintiffs to amend the plaint to incorporate the pleadings regarding encroachment over the suit land effected by the defendants and cost of Rs.500/- came to be imposed on the plaintiffs.

6 In order to avoid multiplicity of litigation, the learned trial Court has rightly allowed the application for amendment partly. There is, in fact, no delay in moving the application as earlier application was pending till 05/07/2017 and it was not pressed and accordingly disposed of. The second amendment application was filed on 14/08/2017. There was no request of reserving the leave. Parties are permitted to move application for

amendment in order to get the matter completely decided. For complete adjudication of the matter, the learned trial Court has correctly decided the application and, as such, it cannot be said that the impugned Order suffers either from illegally or irrationality. There is no procedural impropriety in the impugned Order. The proposed amendment which is allowed by the learned trial Court is not introducing any different case.

7 The petition, as such, is devoid of merit and the same is, therefore, dismissed.

(A.M.BADAR, J.)