

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2570 OF 2020

Hari Baburao Tupe

Petitioner

Versus

Bhimrao Bhagwat Tupe & others

Respondents

Mr.A.H.Kasliwal, advocate for the petitioner.

CORAM : ROHIT B. DEO, J.

DATE : 12th February, 2020.

P.C. :

1 The petitioner is the plaintiff in RCS No.228 of 2006 brought for fixation of boundaries and possession of the encroached portion, if any portion is found encroached.

2 The trial Court dismissed the suit.

3 The appellate Court set aside the judgment and decree of dismissal and remanded the matter to the Civil Court for fresh decision.

4 The plaintiff preferred an application purportedly under Order VI Rule 17 read with Order I Rule 10 of the Civil Procedure Code, which is partly rejected by the trial Court by the impugned order.

5 In the context of the issue involved, it would be necessary to note the reasons recorded by the appellate Court for remanding the matter. The only reason, which persuaded the appellate Court to remand the matter, was that the Cadastral Surveyor, who measured the land, was not alive to his responsibilities. The appellate Court referred to certain decisions of this Court and then observed that the litigants should not suffer for the lapse committed by the Cadastral Surveyor. It is only in view of the finding that the Cadastral Surveyor did not carry out the measurement in accordance with the Survey Manual and the Standard Operating Protocol, that the matter was remitted with a direction that the entire land be remeasured by appointing another Cadastral Surveyor.

6 The appellate Court did permit the parties to amend the pleadings and adduce evidence. However, the said liberty must be understood in the context of the remand order. The liberty is not open ended. It is in this context, that the

application under Order VI Rule 17 read with Order I Rule 10 of the Civil Procedure Code, preferred by the plaintiff, shall have to be analysed.

7 The trial Court noted that the amendment sought is in three parts. The first part of the amendment is that the plaintiff was desirous of amending the description of the suit property and to include the previously excluded portion. This part is allowed by the trial Court. The plaintiff further wish to array 15 persons as additional defendants on the premise that they are co-possessors of G.No.114/6/1. The contention of the plaintiff is that if ultimately the measurement reveals that the land of the plaintiff is encroached, and it is not the defendants no.1 and 2, but others who have done the encroachment, the plaintiff should not be forced to institute multiple proceedings.

8 The trial Court has noted, and rightly so, that the suit is restricted to the alleged encroachment committed by the defendants no.1 and 2. The rationale underlying the remand is already noted *supra*. The remand was only in view of the errors committed by the Cadastral Surveyor, which errors, according to the appellate Court, ought not to prejudice the litigants. By amending the plaint and taking the aid of Order I Rule 10 of the

Civil Procedure Code, the plaintiff is indulging in speculative exercise. The proposed pleading reveals that every averment is speculative and hypothetical and there is no categorical assertion that any person, other than defendants no.1 and 2, has committed encroachment. In this view of the matter, I do not see any error in the order impugned.

9 The learned Counsel for the petitioner has heavily relied on the observations of a learned Single Judge in **Olga Rodrigues & others Vs. Christopher Pinto & others**, 2018 (1) ALL MR 520, and in particular paragraph 16, which reads thus:

“16 It is settled law that while considering the application under order 6 rule 17 of the Code of Civil Procedure, the courts do not go into the correctness or falsity of the case in the amendment. What the court only looks at is whether the amendment is necessary for determining the real question in controversy between the parties provided it does not prejudice or cause injustice to the other side. Rule of amendment is essentially a rule of justice, equity and good conscience and power of amendment should be exercised in the larger interest of doing full and

complete justice to the parties before the court.”

10 The observations in paragraph no.16, reproduced *supra*, do not take the case of the petitioner any further. The observations are in the context of an entirely different factual scenario and have no application to the factual matrix of the instant case.

11 Petition is dismissed.

ROHIT B. DEO
JUDGE

adb