

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5388 OF 2003

Dnyanoba s/o Namdeorao Pawar Patil
(Since deceased through his L.Rs.)

1. Smt. Jankibai Dnyanoba Pawar
Age 70 years, Occ. Household
2. Dattatraya Dnyanoba Pawar-Patil,
Age 45 years, Occ. Agriculture
3. Balasaheb Dnyanoba Pawar-Patil
Age 43 years, Occ. Agriculture

All R/o. Ambajogai, District Beed

...Petitioners

versus

1. Ashok s/o Damodhar Kalamb,
Age 35 years, Occ. Service
R/o. Opp. Yogeshwari Nutan
Primary School, Ambejogai
Tq. Ambejogai, District Beed
2. Satish s/o Damodhar Kalamb
Age 32 years, Occ. Service
R/o. As above
3. Ravindra s/o Damodhar Kalamb,
Age 30 years, Occ. and R/o. As above
4. Smt. Dwarkabai w/o Damodharrao Kalamb
Age 55 years, Occ. Household
R/o. As above

...Respondents

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Ms. S.V. Salunke h/f Mr. V.D. Salunke, advocate for the petitioners
Mr. Mubin H. Shaikh h/f Mr. V.R. Dhorde, advocate for respondents

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CORAM : V. K. JADHAV, J.
DATED : 26th FEBRUARY, 2020

ORAL JUDGMENT:-

1. Heard both sides.

2. The petitioner is the original-defendant No.1. The respondents-plaintiffs have instituted the suit bearing R.C.S. No. 84 of 1999 for declaration of ownership and decree of perpetual injunction in respect of suit property. During pendency of the suit, the respondents-plaintiffs have filed an application Exh.81 in R.C.S. No. 84 of 1999 under Order VI Rule 17 of C.P.C. for carrying out amendment in the plaint. The petitioner-defendant has strongly resisted the said application by filing say at Exh.88. Learned Joint Civil Judge, Junior Division, Ambajogai, by order dated 21.10.2003 below Exh.81 in R.C.S. No. 84 of 1999 allowed the application subject to costs of Rs.200/- to be paid to each of the defendants. Hence, this writ petition.

3. Learned counsel for the petitioner-original defendant No.1 submits that the respondents-plaintiffs have instituted the suit in respect of plot No. 1 house No. 8/1-462 (new house No. 9-279), plot No.2 house No. 8/2-462 (new house No. 9-278). Learned counsel submits that by way of proposed amendment, the respondents plaintiffs have sought insertion of property i.e. plot No.3 house No. 9-277 in the title clause and also sought mandatory injunction for removal of construction made over the disputed property. Learned counsel submits that the proposed amendment would change the nature of the suit in its entirety. Learned counsel submits that on 07.08.1999 the Court Commissioner had submitted a report,

however, the respondents-plaintiffs have sought amendment belatedly by filing application Exh.81. Learned counsel in the alternate submits that in case if this Court is not inclined to interfere in the order passed by the trial court, the petitioner-defendant No.1 (now legal heirs of original defendant No.1) may be permitted to file additional written statement.

4. Learned counsel for the respondents-original plaintiffs submits that on 9.6.2000 the disputed property was measured through the T.I.L.R. and accordingly the boundaries were fixed on 18.9.2000. Learned counsel submits that the respondents-plaintiffs have got clarity as to the plots only after fixation of boundaries. Learned counsel submits that the respondents-plaintiffs could not file the application for amendment in the plaint forthwith as the petitioner-defendant No.1 has preferred an appeal before the Court against the temporary injunction order passed in favour of the respondents-plaintiffs and time was spent in pursuing the said proceeding. Learned counsel submits that the proposed amendment in terms of new para 11-A is important. It has been brought to the notice by way of proposed amendment in para 11-A by the respondents-plaintiffs that during pendency of suit and after fixation of boundaries by T.I.L.R. on 18.9.2000, the petitioner-defendant has made permanent construction towards eastern side of these three plots in the form of compound wall and as such, the respondents-plaintiffs was constrained to file an application for amendment and also for

insertion of the said property. Learned counsel submits that the amendment as sought is clarificatory in nature and it would not change the nature of the suit, in any manner. Learned counsel submits that even though the application came to be submitted belatedly after fixation of the boundaries by T.I.L.R. however, at the time of filing application Exh.81, trial was not commenced and the matter was posted merely for filing list of the witnesses. Learned counsel submits that even the delayed application for amendment is not liable to be rejected merely on the ground of delay. Learned counsel submits that to avoid multiplicity of litigation the amendment as proposed is necessary and the trial court has also permitted the petitioner-defendant to file an additional written statement. By way of proposed amendment, the defence raised by the petitioner-defendant is not likely to prejudice in any manner and further the petitioner-defendant would also get an opportunity to file additional written statement. Learned counsel submits that no interference is required and the writ petition is required to be dismissed.

Learned counsel for the respondents in order to substantiate his contentions, placed reliance on the following cases:-

- i) Surender Kumar Sharma vs. Makhan Singh, reported in (2009) 10 SCC 626
- ii) Surinder Singh vs. Kapoor Singh (Dead) through L.Rs. and others, reported in (2005) 5 SCC 142

- iii) Fritz T.M. Clement and another vs. Sudhakaran Nadar and another, reported in (2002) 3 SCC 605
- iv) Ragu Thilak D. John vs. S. Rayappan and others, reported in (2001) 2 SCC 472

5. I have carefully gone through the contents of application Exh.81. So far as the amendment as proposed in para Nos. 1, 2 and 3 are concerned, those are in consonance with the amendment as proposed by way of para 11-A of the said application. The respondents-plaintiffs were constrained to introduce the said amendment in terms of subsequent events. It has been stated in the said proposed amendment para 11-A that during pendency of the suit before the court and even after fixation of boundaries by the T.I.L.R., the petitioner-defendant has made over construction, which is permanent in nature with the help of pillars and bricks of the compound wall towards eastern side of earlier two plots and which is subject matter of the suit and also covering the third plot. The respondents-plaintiffs have instituted the suit for declaration and decree of perpetual injunction. It is also necessary to mention here that those three plots are carved out in the land Survey No. 367/3 and the dispute is mainly concerned with the said land bearing survey No. 367/3. Thus, considering entire aspects of the case, I do not think that the proposed amendment would change the nature of suit. On perusal of the map below the amended plaint, it appears

that the relief also sought in respect of construction, which has been made subsequently during pendency of the suit. In view of above, I am not inclined to interfere in the order passed by the trial court.

6. So far as the delay in filing application is concerned, I do not think that the petitioner-defendant would get prejudice because of that, since the evidence is yet to be commenced in the matter. This Court has stayed the further proceeding of the suit. In view of the same, the petitioner-defendant would get opportunity to file additional written statement in terms of the amendment as sought and allowed by the trial court. Since the suit is of the year 1999 and it is stayed right from the year 2003, it is necessary to issue certain directions to the trial court to dispose of the same within a time bound manner. Hence, I proceed to pass the following order:-

O R D E R

- I. Writ petition is hereby dismissed.
- II. The trial court is hereby directed to dispose of the suit as expeditiously as possible and preferably within a period of one year from today.
- III. Rule discharged.

(V. K. JADHAV, J.)