

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

909 WRIT PETITION NO. 8101 OF 2020

RAMRAO FALAJI JOGDAND AND OTHERS
VERSUS
LAXMAN FALAJI JOGDAND AND OTHERS

Advocate for Petitioners : Mr. Y.D. Delmade.

**CORAM : MANGESH S. PATIL, J.
DATED : 10.12.2020**

PER COURT :

In this petition by the original defendants they are impugning the order passed by the learned trial Court on the application Exhibit 32 whereby, the Court allowed the application of the respondent – plaintiff to carry out amendment under Order VI Rule 17 of the Code of Civil Procedure, 1908.

2. As the suit originally stands, the respondent claims exclusive possession over his agricultural land and prays for perpetual injunction restraining petitioners herein from obstructing his possession over the land Gat No. 511 as described in paragraph No. 1 of the plaint.

3. By the proposed amendment the respondent sought to correct

the description and boundaries by mentioning that the roads mentioned in description are in fact specific roads. In addition, he submitted that towards the east property of one Keshav Limbaji Jogdand is shown when in fact it belongs to his brother Hanwata.

4. By virtue of the second amendment the respondent sought to delete the averments in para No. 9 of the plaint coupled with prayer No. B, touching validity of the sale deeds executed by the defendant No. 1, who is the petitioner No. 1 herein in favour of the respondent Nos. 3 to 5 to be not binding on him. He now submitted that the averments and the relief was claimed mistakenly.

5. By the impugned order the Civil Judge allowed the application subject to payment of cost of Rs. 1,000/- to the petitioners. Hence, this Writ Petition.

6. The learned Advocate for the petitioners submits that the amendment was sought at a belated stage after the trial had commenced. Besides, vital admissions are being sought to be omitted by the proposed amendment. He would also submit that a specific issue was raised regarding limitation and the issue was framed. The proposed amendment is now thoughtfully applied

pursuant to such objection regarding limitation.

7. I have carefully gone through the papers.

8. So far as the description of the suit property is concerned, the amendment sought by the respondent is only to correct the description. There is apparently no material change being sought to be made in that respect. The respondent merely wants to replace the name of Keshav whose property is said to be towards the east of the respondent's property by mentioning the name of brother of Hanwata. Besides, in respect of the boundaries where the plaint describes the property is bound by roads, by the proposed amendment the respondent is now seeking to describe the roads by mentioning the names of the villages. There is no material change being sought by this amendment much less which would cause any prejudice to the petitioners.

9. So far as omission of paragraph No. 9 and prayer 'B' is concerned, it is apparent that the petitioners were objecting such an amendment on the ground that the relief was time barred. It also appears that a specific issue has been framed to this effect. But when, by virtue of this proposed amendment the respondent is now seeking

to delete the relevant portion as well as the prayer as far as the relief of declaration in respect validity of the sale deeds executed by the petitioner No. 1 is concerned, one cannot comprehend or understand as to how the proposed amendment seeking to delete these averments and the relief, would cause any prejudice to the petitioners. Rather, now the respondent is admitting the stand of the petitioners to the extent of validity of sale deeds executed by the petitioner No. 1 and is seeking to omit the prayer in that respect.

10. In view of such state of affairs, I find no sufficient reason to cause any interference with the impugned order whereby the learned Judge has allowed the amendment to be carried out.

11. The Writ Petition is dismissed in limine.

(MANGESH S. PATIL, J.)