

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3365 OF 2019

Suresh Mahadeo Patil

.Petitioner

Vs.

Sadashiv Krishna Patil & ors.

.Respondents

Mr. A. M. Kulkarni, Advocate, for the Petitioner

Mr. Kuldeep U. Nikam, Advocate, for the Respondent Nos. 1 & 2

Mr. Vaibhav R. Gaikwad, Advocate, for the Respondent Nos. 3 to 7

CORAM : REVATI MOHITE DERE, J.

DATE : 28.01.2020

P. C.

. Heard learned counsel for the parties.

2. Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal at the stage of admission.

3. By this Petition, the Petitioner (Original Plaintiff) has impugned the order dated 23.01.2019 passed by the learned C. J. J. D., Tasgaon, District – Sangli below Exh. 125 in R. C. S. No. 71 of 2011, by which the learned Judge was pleased to reject the Petitioner's Application seeking amendment of the plaint under O. VI, Rule 17 & Section 151 of the Code of Civil Procedure (for short 'C. P. C.') .

4. Learned counsel for the Petitioner submits that the amendment Application (Exh. 125) was filed to bring on record subsequent developments. He submits that during the pendency of the suit, the Respondent Nos. 1 & 2 (Original Defendant Nos. 1 & 2) constructed a tin shed and toilet in the suit property necessitating amendment in the plaint. Learned counsel relied on the issues framed by the trial Court whilst deciding the Petitioner's amendment Application. He submits that the learned Judge with respect to Issue No. 1 "Whether the proposed amendment will change the nature of the suit ?", had answered the same in the negative, that even Issue Nos. 2 & 3 were answered in the negative, observing thereby that the proposed amendment was not essential for determining the real controversy between the parties. Learned counsel relied on the averments made in the amendment Application (Exh. 125).

5. Learned counsel for the Respondent Nos. 1 & 2 opposed the Petition and submits that no interference is warranted in the impugned order. He submitted that the Petitioner had not shown due diligence by carrying out the amendment at the earliest. According to the learned counsel for the Respondent Nos. 1 & 2, the amendment ought to have been carried out at the earliest.

6. Perused the papers including the impugned order dated 23.01.2019. The Petitioner is the Original Plaintiff who has filed a suit for perpetual injunction and declaration in the Court of the learned C. J. J. D., Tasgaon, District – Sangli, as against the Defendants. It appears that initially, there was an ad-interim relief granted by the trial Court on 18.05.2011, by which the Defendant Nos. 1 & 2 i. e. the Respondent Nos. 1 & 2 themselves or anybody acting on their behalf were temporarily restrained from erecting new construction over the suit property as well as from taking electricity, telephone and water connection therein and from alienating or otherwise creating any third party interests in the suit property until further orders. Thereafter, after the Respondents appeared, the learned Judge after hearing the parties was pleased to reject the Petitioner's Application (Exh. 5), since according to the Petitioner, during the pendency of the ad-interim relief granted by the trial Court on 18.05.2011, the Respondent Nos. 1 & 2 had constructed a tin shed on the suit property. Pursuant thereto, the Petitioner filed an Application under O. XXXIX, R. 1 of the C. P. C. and sought certain reliefs. The said Application was rejected. In the meantime, the Petitioner, being aggrieved by the said order passed below Exh. 5 by the trial Court, filed an Appeal in the District Court, Sangli i. e. M. C. A. No. 30 of 2017. During the pendency of the said Appeal, it appears that parties were directed to maintain status-quo. The

learned District Judge, Sangli was pleased to dispose of M. C. A. No. 30 of 2017 with certain directions i. e. both the parties were directed to maintain status-quo during the pendency of the suit. The hearing of the R. C. A. No. 71 of 2011 was also expedited and the trial Court was directed to dispose of the suit as early as possible and preferably within one year from the date of passing of the order. The learned District whilst disposing of M. C. A. No. 30 of 2017 in para 5 observed, that it was needless to state that parties were at liberty to exercise their rights of making amendments, filing documents, filing say / written statements and other steps required for determining the real controversy between the parties. It was also clarified that all the steps were required to be taken without any delay. Pursuant to the said order dated 01.09.2018 passed by the learned District Judge – 5, Sangli below M. C. A. No. 30 of 2017. The Petitioner herein filed an Application on 10.10.2018 and sought amendment of the plaint. The said Application is on page No. 83 of the Petition. In the said Application, the Petitioner has categorically averred that a tin shed was constructed by the Defendant No. 2 some time in March, 2018 and that again in July, 2018, the Defendant No. 2 constructed a toilet in the suit property. Accordingly, the Petitioner sought to amend the plaint to bring on record the subsequent developments as mentioned in the Application. The said Application was resisted by the Defendant Nos. 1 & 2 by filing their say. In para 10 of the reply filed by the Respondent No. 1, the said Defendant has not

denied the construction of the toilet and tin shed, during the pendency of the Petitioner's Appeal in the District Court. Infact, the learned Judge whilst deciding the Petitioner's Application for amendment framed three issues which are as under :-

“01. Whether the proposed amendment will change the nature of the suit ?

02. Whether the proposed amendment is essential to determine the real controversy between the parties & decide the matter on merits, once for all ?

03. Whether proposed amendment is necessary to avoid multiplicity of the proceedings ?”

7. The learned Judge although observed that the proposed amendment will not change the nature of the suit, held in Issue No. 02 that the proposed amendment was not essential for determining the real controversy between the parties. In fact, it appears that some construction was carried out during the pendency of the Petitioner's Appeal in the District Court and as such, it is necessary to bring on record the subsequent developments, so that the trial Court can decide the real controversy between the parties. The proposed amendment will not change the nature of the suit. Infact, by permitting the amendment as sought by the Petitioner, the proposed amendment will avoid multiplicity of proceedings between the parties.

8. Considering the aforesaid, the impugned order dated 23.01.2019 passed by the learned C. J. J. D., Tasgaon, District – Sangli below Exh. 125 in R. C. S. No. 71 of 2011 cannot be sustained and accordingly, is quashed & set aside. The Petitioner is permitted to carry out the amendment to the plaint within four weeks from today. On the amendment being carried out, the Respondents (Original Defendants) are permitted to file their additional Written Statement within four weeks thereafter.

9. Accordingly, the Petition is disposed of on the aforesaid terms. Rule is made absolute in the aforesaid terms.

All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)