

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

WRIT PETITION NO.2755 OF 2014

Hasan Khan S/o Rumkhan
Age: 77 years, Occu: Nil,
Through its GPA
Kayyum Khan S/o Hasan Khan
Age: 45 years, Occu: Plumber,
R/o: Plot No.7, Aasifiya Colony,
Aurangabad.
Tq. & Dist. Aurangabad.

... Petitioner

Versus

1. Khurram Ahemad Khusro,
Age: 30 years, Occu: Business,
Chelipura, Aurangabad.

2. Shaikh Jahir S/o Shaikh Shabbir
Age: 39 years, Occu: Business,
R/o: Deodi Bazar, City Chowk,
Aurangabad, District Aurangabad.

... Respondents

...

Mr. V. P. Latange h/f Mr. Shinde Balaji S., Advocate for Petitioner
Mr. A. P. Bhandari, Advocate for Respondent No.2

...

CORAM : N. B. SURYAWANSHI, J.

DATE : 8th December, 2021

ORAL JUDGMENT :

. **RULE.** Rule made returnable forthwith. Heard finally with the
consent of the parties.

2. This petition is directed against the order passed by 7th Joint Civil Judge, Senior Division, Aurangabad below Exhibit-55 in Special Suit No.119/2011, thereby rejecting the prayer of the petitioner/original plaintiff seeking amendment in the plaint.

3. Special Civil Suit No.119/2011 is filed by the petitioner/original plaintiff seeking a declaration that the sale deed bearing No.594/2011 executed by the defendant No.1 in favour of defendant No.2 dated 28-01-2011 is illegal, null and void, and not binding on the plaintiff. Perpetual injunction is sought restraining the defendant no.2 from alienating, dispossessing or creating third party interest in the suit land admeasuring 20 R boundaries which are given in the plaint.

4. The suit was resisted by the respondents/defendants by filing a written statement. The petitioner/original plaintiff, thereafter, filed an application Exhibit-55 under Order VI Rule 17 of the Civil Procedure Code seeking amendment in the boundaries of the suit land. In the amendment application, it is mentioned that at the time of filing suit, inadvertently, it is mentioned that towards southern side, there is "Gut No.247" when in fact on southern side there is a "road". The same has occurred due to typing mistake and wrong understanding of the learned advocate representing the plaintiff at that point of time. The said

application was resisted by the respondents/defendants. The trial court rejected the said application. Hence, the present petition.

5. After hearing the rival submissions of the parties and after going through the record, it is clear that the amendment as sought by the petitioner/original plaintiff does not change the nature of relief claimed in the suit. It appears to be a bonafide inadvertent mistake, which the plaintiff sought to correct. The trial court by considering the settled legal position that amendment should be liberally allowed and the principles set out in that behalf in catena of decisions of this Court as well as the Hon'ble Supreme Court ought to have allowed the amendment in the facts of the present case. The trial Court has ignored the legal position that the litigant should not suffer either on account of technicalities or on account of mistake committed by a Court of Law. The approach of the trial court while rejecting the application seeking amendment appears to be hyper-technical. Though the trial court has observed that after two years, the amendment application was moved, fact remains that trial has not commenced and the parties are yet to lead evidence. For delay of two years, the defendants could have been adequately compensated in terms of costs. I am therefore of a considered view that the impugned order passed by the trial court is unsustainable in law and facts of the present case and the same is liable to be quashed and set aside. Hence the following order:

ORDER

- (i) Writ Petition is allowed in terms of prayer clause “B”.
- (ii) The impugned order passed by the 7th Joint Civil Judge, Senior Division, Aurangabad below Exhibit-55 in Special Suit No.119/2011 is hereby quashed and set aside.
- (iii) Application Exhibit-55 is allowed. The amendment to be carried by the petitioner/original plaintiff within a period of three weeks from today.
- (iv) The defendant/respondent to file written statement, if any, within a period of three weeks thereafter.
- (v) Rule is made absolute in the above terms with cost of Rs.5000/- to be paid by the petitioner/original plaintiff to the defendants in trial court.

(N. B. SURYAWANSHI, J.)