

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

WRIT PETITION NO. 13592 OF 2017

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| 1. Nilkanth s/o. Shridhar Thorbole
Age. 60 years, Occ. Agri.,
R/o. Gojwada, Tq. Washi,
Dist. Osmanabad. | .. | Petitioners
[original
defendants] |
| 2. Shrihari s/o. Nilkanth Thorbole
Age. 32 years, Occ. Agri.,
R/o. Gojwada, Tq. Washi,
Dist. Osmanabad.
Through GPA
Nilkanth s/o. Shridhar Thorbole
Age. 60 years, Occ. Agri.,
R/o. Gojwada, Tq. Washi,
Dist. Osmanabad. | | |

Versus

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| 1. Hanumant s/o. Baburao Magar
Age. 32 years, Occ. Agri.,
R/o. Gojwada, Tq. Washi,
Dist. Osmanabad. | .. | Respondents
[No.1 ori.
plaintiff,
Nos.2 & 3
original
defendants] |
| 2. Balaji s/o. Aanta Kore,
Age. 30 years, Occ. Agri.,
R/o. Indapur, Tq. Washi,
Dist. Osmanabad. | | |
| 3. Sham s/o. Ananta Kore
Age. 25 years, Occ. Agri.,
R/o. Indapur, Occ. Washi,
Dist. Osmanabad. | | |

Mr. K.R. Doke, Advocate for the petitioners.
Mr. B.V. Thombre, Advocate for respondent No.1.

CORAM : N.J.JAMADAR, J.
RESERVED ON : 04.03.2021
PRONOUNCED ON : 16.03.2021

J U D G M E N T :-

01. Rule. Rule made returnable forthwith and with the consent of learned Counsel for the parties, heard finally at the stage of admission.

02. The petitioners/original defendant Nos.1 and 2 have invoked the writ jurisdiction of this Court being aggrieved by the order passed by the learned Joint Civil Judge, Junior Division, Vashi, on an application for amendment [Exh.97] in RCS No.97 of 2013, whereby the learned Civil Judge was persuaded to allow the application to amend the plaint, so as to correct the date of alleged sale-deed, under which the predecessor in title allegedly acquired ownership over the suit premises, in respect of which the plaintiff sought declaration of title and the consequential relief of perpetual injunction.

03. The respondent No.1-plaintiff instituted the above numbered suit on the premise that the predecessor in title of defendant No.3 executed the sale-deed on 2nd May, 1992 on a stamp paper of Rs.20/- denomination, which was purchased by petitioner No.2/defendant No.2 on 1st May, 1992. The predecessor in title of the plaintiff was put in possession of the suit property under the said sale-deed. It came to be mutated in the name of the predecessor in title of the plaintiff. The defendant Nos.1 and 2, the petitioners herein, at the instigation of defendant Nos.3 and 4, caused obstruction to the possession of the plaintiff over the suit property, in the month of April, 2012. Hence, the suit for declaration of title and perpetual injunction.

04. The defendants resisted the suit. The trial commenced. Thereafter, the respondent No.1/plaintiff preferred application [Exh.97] under Order VI Rule 17 of the Code of Civil Procedure, 1908 [the code] asserting, inter alia, that inadvertently in the plaint, the date of

execution of said instrument was mentioned as 2nd May, 1992 and the date of purchase of stamp paper was mentioned as 1st May, 1992. Instead, the copy of instrument [which was sought to be tendered in evidence as and by way of secondary evidence] bears out that the stamp was purchased on 1st June, 1992 and it was executed on 2nd June, 1992. The plaintiff thus sought permission to amend the plaint, so as to incorporate the correct dates.

05. The petitioners herein resisted the application for amendment. It was, inter-alia, contended that the application came to be preferred after cross-examination of respondent No.1/plaintiff and no case to take the matter out of the purview of the proviso to Rule 17 of Order VI was made out.

06. The learned Civil Judge was persuaded to allow the application opining that it would be improper to proceed with the suit without correcting the record when

the correct date of execution of the alleged sale-deed is borne out by the said instrument.

07. I have heard Mr.K.R. Doke, learned Counsel for the petitioners and Mr.B.V. Thombre, learned Counsel for respondent No.1.

08. An endeavour was made on behalf of the petitioners to draw home the point that the respondent No.1-plaintiff had not made out a case to show that despite due diligence the amendment could not have been sought before the commencement of trial. As the copy of the document, which was sought to be tendered, in itself was inadmissible in evidence, the Trial Court could not have allowed the plaintiff to amend the plaint.

09. It is true that the interdict contained in the proviso to Rule 17 of Order VI comes into play. Indisputably, the application was moved after the recording of cross-examination of the plaintiff.

However, the substance of the matter cannot be lost sight of. The nature of the amendment deserves to be taken into account. By the proposed amendment, the plaintiff sought to incorporate the correct date of the purchase of the stamp paper and the date on which the alleged sale-deed was executed. The amendment, which is rectificatory in nature, neither changes the nature of the suit, nor it has the potentiality to cause prejudice to the defendants.

10. In the circumstances, the bar created by the proviso to Rule 17 of Order VI of the Code would not operate with equal vigour and preclude the Court from allowing a party to correct the inadvertent clerical or typographical error.

11. In the aforesaid view of the matter, I impelled to hold that the learned Civil Judge was justified in allowing the application for amendment of the plaint. No interference is, thus, warranted, in the impugned order.

12. Resultantly, the petition fails. Thus, the petition stands dismissed.

Rule discharged.

No costs.

[N . J . JAMADAR , J .]