

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4276 OF 2016**

Shri Dahyabhai Madhavji Patel Petitioner
V/s
Shri Ganpatrao Saganu Varkar and Anr. Respondents.

Mr. Sandeep S. Koregave for the Petitioner.
Mr. Chetan G. Patil for Respondent No.1.

CORAM: NITIN W. SAMBRE, J.

DATE: FEBRUARY 22, 2021

P.C.:-

1] Application-Exhibit-131 came to be moved by Respondent/Plaintiff, seeking amendment of the plaint which is allowed vide impugned order dated 30/12/2015 passed by the 4th Joint Civil Judge, Junior Division, Kolhapur.

2] Contentions of the learned Counsel for the Petitioner are, suit is pending since last more than 20 years and in this intervening period, Respondent/Plaintiff has carried out amendment thrice, including present one. It is further claimed that Respondent/Plaintiff is in witness box and in cross-examination at Exhibit-92, he has admitted

description of the property. In that view of the matter, according to him, amendment which is preferred at belated stage and so as to cover up the admission given in cross examination ought not to have been granted.

3] The learned Counsel for the Respondent/Plaintiff would support the order impugned on the ground that what has been sought to be added by way of amendment is clarification to the description of the suit property. According to him, same has not changed the nature of the proceedings or pleadings and that being so, order impugned is just and proper.

4] I have perused the pleadings in the plaint so also evidence of the Respondents/Plaintiffs. Suit for specific performance is based on agreement of sale dated 16/7/1992. Petitioner is claiming to have purchased the property before filing of the suit and that being so, Petitioner came to be added by way of first amendment, whereas by second amendment legal representative of original vendor who died during pendency of the suit came to be added. As such, approach on the part of Respondents/Plaintiffs in moving the application for

amendment was justified.

5] However, this Court cannot be oblivious to the fact that amendment moved at later stage i.e. after Respondent has entered into witness box. To be more precise, trial has already commenced.

6] In the aforesaid backdrop, considering the nature of amendment, in my opinion, no case for interference on merit is made out. However, in the facts and circumstances of the case, costs of Rs 500/- is enhanced to Rs 5000/- to be deposited in the Trial Court within a period of four weeks from today, which the Petitioner will be entitled to withdraw.

7] Petition stands disposed of accordingly.

(NITIN W. SAMBRE, J.)