

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

WRIT PETITION NO.701 OF 2021

Bhupal Shankar Chougule Petitioner

Vs.

Mhadgonda Balgonda Patil Respondents
since deceased, through LRs
Kusumabai Mhadgonda Patil & Ors.

Mr. Sandeep S. Koregave for Petitioner.

Mr. RahulB. Khot i/by Nagesh Y. Chavan for Respondent

Coram : NITIN W. SAMBRE, J.

Date : 4th MARCH, 2021

P.C.:

1. After the trial in Special Civil Suit No. 94 of 2018 for specific performance has commenced, the Petitioner preferred an application under Order VI, Rule 17 C.P.C. for amendment vide Exhibit 19, which is rejected vide impugned order dated 26th November, 2019. An application preferred under Section 114 of C.P.C. seeking review of the said order i.e. Exhibit 23 also came to be rejected by the order dated 12th February, 2020 passed by the Court of Civil Judge, Senior Division, Ichalkaranji. As such, this petition.

2. The prayer for amendment is objected by the Respondents on the following grounds:

- a) That in case if the amendment is granted, same change entire nature of the suit claim and;
- b) the trial in the suit is at advance stage.

3. If we consider the aforesaid objections, in response to the agreement of sale, the Petitioner- Plaintiff issued a notice, which is form to be a basis for pleading cause of action in the suit. In the said notice, it is specifically mentioned that on 13th November, 2018, the Petitioner- Plaintiff attended office of Sub Registrar for getting sale-deed executed. In the said backdrop, it is claimed in the application that the date mentioned in paragraph 7, line no.3 of the plaint be corrected to 13th November, 2018 to that of 13th August, 2018. The further correction is sought in paragraph 8, line no. 3, instead of word “at the house of the Plaintiff”, the same be corrected to “at the house of Defendant”. In paragraph 10, line No.12 of the plaint instead of 28th October, 2018, same be permitted to be corrected as 28th November, 2018.

4. According to the Petitioner, the above errors are typographical mistakes and no prejudice will be caused to the Respondents. It appears that there was a foundation for the correction as reflected in the notice issued by the Petitioner to the Defendant before the suit was instituted.

5. As such, case of the Petitioner that there was a negligence on the part of the Lawyer in drafting the plaint for which Petitioner should not be made to suffer, needs to be accepted, in view of law laid down by the Apex Court in the matter of Rafiq and another V/s. Munshilal and Another, reported in **A.I.R 1981 Supreme Court Cases 1400**.

6. Since the aforesaid dates are already within the knowledge of the Respondent, as observed hereinabove i.e. by referring to the notice issued by the Petitioner, in my opinion, the Respondent-Defendant is not taken by surprise, if the amendment as prayed is allowed.

7. Even if the suit is at advance stage, recording of evidence of the Defendant is yet to be commenced and the Plaintiff is yet to file evidence closed purshis.

8. In the aforesaid backdrop, both these impugned orders are hereby quashed and set aside.

9. Application Exhibit 19 moved under Order VI, Rule 17 of C.P.C. is allowed, subject to costs of Rs.25,000/- to be deposited before the trial Court to which the Respondent-Defendant will be entitled to withdraw.

10. The cost to be deposited within four weeks, which will be condition precedent for carrying out amendment in the plaint.

(NITIN W. SAMBRE, J.)