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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11362 OF 2014

RETHARE HARNAKSHA VIVIDH
KARYAKARI SAHAKARI SOCIETY
LIMITED

....PETITIONER

V/s.

MADHUKAR DNYANU MOHITE AND ORSRESPONDENTS

Mr. Shriniwas S. Patwardhan for the Petitioner
Mr. Machindra B. Deshmukh for respondent nos. 2 to 4

CORAM : NITIN W. SAMBRE, J.

DATE: JULY 30, 2021.

P.C.:

1] Heard. Shri. Patwardhan, learned counsel appearing for the petitioner-plaintiff and Shri. Deshmukh appearing for respondent-defendant.

2] In a suit for injunction being R.C.S. No. 777/2012, application Exh. 58 for amendment based on subsequent development i.e. order

of revenue authorities passed on 05/12/2013 in an appeal preferred by the petitioner-plaintiff, came to be rejected vide impugned order dated 04/08/2014.

3] The submissions of Mr. Parwardhan are, there is dispute about the exact area of the suit property which is arising out of city survey no. 438 and he would place reliance on pleadings in para 3 of the plaint. According to him, nature of claim remained to be same, however, what is sought to be corrected is the area as is mentioned in the suit claim.

4] While countering the submissions, Mr. Deshmukh would urge that order passed by the revenue authorities in favour of the petitioner-plaintiff dated 05/12/2013 correcting the area of city survey no. 438 is subject matter of challenge in appeal at the behest of Patil brothers who are owners of city survey no. 439 and that being so, petition is liable to be dismissed for non-joinder of necessary parties. In addition, the submissions of Mr. Deshmukh are, the nature of Suit claim changes and that being so, order of the Trial

Court is very much justified.

5] Considered submissions.

6] At the time when the application Exh. 58 came to be moved for amendment, the trial in the suit has not commenced. Amendment is based on developments occurred during the pendency of the suit i.e. order of revenue authorities dated 05/12/2013 whereby area of city survey no. 438 came to be corrected after adjusting the area of city survey no. 439. The aforesaid development, in my opinion, has rightly prompted the petitioner to move an application for amendment. The Trial Court failed to consider the same.

7] Though Mr. Deshmukh was justified in claiming that the aforesaid order is subject matter of challenge in the appeal before the revenue authority at the behest of owner of city survey no. 439, however, an order consequent thereto can be placed before the Civil Court at the time of appreciation of evidence in the backdrop of rival

pleadings. It shall be always open for the petitioner-plaintiff to claim or restrict his relief based on subsequent orders, if any, passed in an appeal as has been claimed to be pending at the behest of Patil brother, owners of city survey no. 439.

8] In this view of the matter, Petition is allowed. Order dated 04/08/2014 passed below Exh. 58 is hereby quashed and set aside. Application Exh. 58 is allowed subject to payment of cost of Rs. 7000/- to be deposited before the Civil Court to which respondent-defendant will be entitled to withdraw. Let the cost be deposited within period of two weeks from today.

[NITIN W. SAMBRE, J.]