

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4018 OF 2020

1. Anil s/o Bhausahab Ghavate
Age- 38 years, Occ- Agriculture.
2. Pratibha Bhausahab Ghavate
Age- 36 years, Occ- Household.
3. Smt. Pramilabai Bhausahab Ghavate
Age- 58 years, Occ- Household,
All R/o. Sonai, Tq. Newasa,
District- Ahmednagar.

...PETITIONERS

VERSUS

1. Bhausahab s/o Vishwanath Ghavate
Age- 64 years, Occ- Agriculture.
2. Ratanbai Bhausahab Ghavate
Age- 62 years, Occ- Household,
Both R.o. Sonai, Tq. Newasa,
District- Ahmednagar.
3. Sunil s/o Bhausahab Ghavate
Deceased through his L.Rs.,
- 3-A) Deepali Sunil Ghavate,
Age- 28 years, Occ- Household.
- 3-B) Vaishanvi Sunil Ghavate,
Age- 4 years, U/G Respondents
No. 3-A Mother.,
Both R/o. Kondhwad, Tq. Rahuri,
District- Ahmednagar.

...RESPONDENTS

Mr. Parag Barde, Advocate for Petitioners.

Mr. S.R. Sapkal, Advocate for Respondents No. 1 and 2.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 11th MARCH, 2022

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard with the consent of parties.

2. The Petitioners are aggrieved by the order passed by learned Civil Judge Senior Division, Newasa, below Exhibit-106 in Regular Civil Suit No. 293/2003, thereby allowing the amendment application filed by the Respondents.

3. The Respondents filed a suit on 18.09.2003 for possession of the suit property described in para 1-B of the plaint and in the measurement report. In the written statement filed on 19.01.2004 resisting the suit, the Petitioners claimed that the boundaries given by the Respondents in the plaint are wrong. The evidence of the plaintiff was recorded on 06.09.2004 and his cross examination is conducted on 21.02.2006.

4. Thereafter, application Exhibit-106 is filed by the Respondents contending that due to revenue division of Sonai village, the gut numbers of that village are changed, so also gut numbers of suit property, and therefore, it is necessary to amend the suit. The said amendment is allowed by the Trial Court holding that the amendment does not change the basic nature of the suit and the amendment is necessary to decide the controversy between the parties. The Trial Court, therefore, allowed the application for amendment by imposing cost of Rs. 5,00/- on the respondents.

5. Heard the rival submission of learned advocate for the Petitioners Shri. Barde and learned advocate Shri. Sapkal for Respondents No. 1 and 2.

6. The learned advocate for the Petitioners vehemently assailed the impugned order contending that there is total absence of due diligence on the part of Respondents in moving the amendment application and the Trial Court ought to have rejected the application.

7. On the other hand Mr. Sapkal, the learned advocate representing Respondents No. 1 and 2 supported the impugned order.

8. Admittedly, the amendment so proposed by the Respondents and allowed by the Trial Court is in respect of the subsequent events. Though, the Respondents have tried to change the boundaries by way of amendment that by itself cannot be a ground to refuse the amendment. I do not agree with the submission of learned advocate for the Petitioners that by way of amendment the admission given by the Respondents in their evidence are likely to be taken away. The Trial Court has rightly held that the amendment does not change the basic nature of suit and the same is necessary so as to decide controversy between the parties.

9. It is settled legal position that the amendment is to be liberally allowed. The grievance of the Petitioners that there is lack of due diligence on the part of the Respondents, can be taken care of by adequately compensating the Petitioners. With a view to avoid multiplicity of proceedings the amendment is required to be allowed and the Trial Court has rightly allowed the same.

10. For the aforestated reasons no illegality or perversity is found in the order impugned in the present petition. The petition is therefore, dismissed. However, in the peculiar facts of the present case, the Respondents shall pay costs of Rs. 5,000/- to the Petitioners before the Trial Court.

[NITIN B. SURYAWANSHI]
JUDGE