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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4357 OF 2015

Madhukar s/o Changdeo Sadaphal = PETITIONER
Vs.
Parwatabai Sadashiv Hagwane and
others. = RESPONDENTS

Mr.Rahul A.Tambe, Advocate for petitioner;
Respondent Nos.1, 2A to 2C, 3 to 6 are served

CORAM : PRITHVIRAJ K.CHAVAN,J.

RESERVED ON : 26/04/2022

PRONOUNCED ON : 27/04/2022

PER COURT :-

1. This petition takes an exception to an order passed by Civil Judge, Senior Division, Shrirampur, below Exhibit-82 in Regular Civil Suit No. 113/2010, rejecting the application filed by the petitioner (original plaintiff) seeking amendment in the plaint, thereby praying for rectification of a registered agreement of sale between the parties wherein Gut No.155/1 had been inadvertently written instead of Gut No.155/2.

2. Few facts, germane for disposal of this

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petition, can be summarized as under.

a. On 10.6.1991, a agreement to sale executed by one Sadashiv Hagwane, husband of Respondent No.1 in respect of Gut No. 155/2. However, due to oversight, it was described as Gut No.155/1 in the said document, which according to the petitioner, was a mutual mistake of the parties.

b. After execution of the said document dated 10.6.1991 and after receipt of an amount of Rs.5,500/-, balance consideration was accepted by the deceased Sadashiv on 1.9.1993 and the possession of the suit property was handed over to the petitioner. Petitioner's name thereafter came to be recorded in the 7/12 extract.

c. The petitioner contends that since 1993 he has been cultivating the suit property without any obstruction from the respondents. The respondents failed to fulfill their part of contract. However, on 16.11.2009 Respondent Nos.1 & 3 moved an application before the Tahsildar,

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Shrirampur, requesting him to delete name of the petitioner from 7/12 extract. Subsequently, the petitioner filed RCS No.113/2010 for specific performance of contract, declaration and permanent injunction. After filing the written statement and during the course of his evidence, the petitioner realized that Gut No.155/2 was wrongly mentioned as Gut No.155/1 in the agreement to sell document. He also realized that even in the plaint, instead of "10.6.1981", the date of the agreement to sell was stated as "10.6.1991". The petitioner, therefore, moved an application below Exh.58 which came to be rejected by the learned Civil Judge and, therefore, the petitioner had filed a Writ Petition No. 2933/2013.

3. It is a matter of record that this court in the said Writ Petition between the same parties, quashed and set aside an order dated 20.2.2013 passed by the Civil Judge, Senior Division as the learned Civil Judge had rejected an application seeking amendment in the plaint of the petitioner. The relevant part of the order of this Court is extracted below, -

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"(A) The impugned order dated 20.2.2013 is quashed and set aside.

(B) The petitioner/plaintiff is permitted to correct two errors mentioned in the plaint i.e Gut No.155/2 and the date of the agreement to sell 10.6.1981, within two weeks from today.

(C) Post correction, if the defendants so desire, they may file an additional Written Statement.

(D) The defendants, if they desire, may make an application to the trial Court for subjecting the plaintiff to further cross-examination only with reference to the correction being carried out. The petitioner/plaintiff shall not object to such an application.

(E) The petitioner shall pay costs of Rs.3,000/- (Rs. Three Thousand only/-) and shall deposit the same before the trial Court within a period of two weeks from today.

(F) The defendants are permitted to withdraw the same in equal proportions."

4. Once this Court had already permitted the petitioner to rectify and correct Gut No. as 155/2 as it has been wrongly mentioned as Gut No.155/1 in the plaint and also to correct the date of agreement to sell as 10.6.1981, there was hardly any reason for the Trial Court to refuse to permit

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the amendment of the plaint seeking rectification of the agreement to sell dated 10.6.1981. It is the contention of the petitioner that since he is an illiterate, rustic villager, he could not realize the incorrect Gut number described in the agreement to sell. The suit is not in respect of Gut No. 155/1, but is in respect of Gut No.155/2.

5. Section 26 of the Specific Relief Act, 1963 provides when an instrument may be rectified. The petitioner's application below Exhibit-82 is essentially for rectification of the agreement to sell, which is apparently a bonafide mistake and, therefore, there was no reason for the Trial Court to reject the application only on the ground that it was sought belatedly. It will not, in any way, change nature of the suit as has been observed by the Trial Court nor it will cause any prejudice to the respondents-defendants.

6. It is a matter of record that the suit was filed way back in 2010 and has been pending since then without proceeding further due to the pendency of the petition.

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7. Consequently, the impugned order dated 17.3.2015 warrants interference and as such, is quashed and set aside. The petitioner shall be permitted to amend the plaint in view of his application at Exh. 82 dated 30.8.2014 within ten days from the date of passing of this order.

8. After carrying out the amendment, the respondents are at liberty to amend their written statement, if so advised.

9. The Trial Court shall thereafter frame necessary issues within two weeks and thereafter decide and dispose of the suit as expeditiously as possible by the end of July 2022 without granting unnecessary adjournments to any of the parties.

10. The parties shall cooperate in disposing of the suit.

11. The petition stands disposed of in the aforesaid terms with no order as to costs.

(PRITHVIRAJ K.CHAVAN)
JUDGE

BDV