

**THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.4723 OF 2019

DNYANESHWAR DEVIDAS GOTE
VERSUS
LAXMAN SHANKAR GOTE AND OTHERS

...

Advocate for Petitioner : Mr. Rajendra N. Chavan
Advocate for Respondent Nos.1 to 3: Mr. Anil S. Bajaj

...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 4th August, 2022

ORDER :

1. The challenge in this petition is to the order dated 04/02/2019, passed by the learned 2nd Joint Civil Judge, Junior Division, Gangapur, District Aurangabad below Exhibit-26 in Regular Civil Suit No.145/2017, thereby rejecting the application filed by the petitioner seeking amendment in the plaint.

2. The petitioner/original plaintiff has filed suit for perpetual injunction against the respondents/defendants. In the plaint, while giving description of the suit property, the petitioner has stated that, towards east, land of defendant no.1 in Gat No.2019, towards west land of Padmabai Chandrabhan Kere, towards south land of Ganesh Dhulchand Jaiswal and towards north Government Shiv. After rejection of application (Exhibit-5), the petitioner approached

the Appellate Court by filing a Misc. Civil Appeal No.48/2017, which is also dismissed on merits. Thereafter, taking clue from the observations of the Appellate Court, the petitioner has moved application (Exhibit-26) seeking amendment to the boundaries given by the petitioner in the plaint. The petitioner sought to amend that "towards east - land of Padmabai Chandrabhan Kere, towards west - land of defendant no.1 in Gat No.219". The application is resisted by the respondents/defendants and the Trial Court has rejected it. Hence, the present petition.

3. Heard the learned Advocate for the petitioner and the learned Advocate for the respondents.

4. At the time of filing the suit, the petitioner has filed a map prepared by Talathi, at the instance of the petitioner. In the said map, a specific note is given, that as per oral instructions of the petitioner, the said boundaries are given. As per the boundaries mentioned in the said map, the petitioner has given boundaries in the plaint. The map prepared by the TILR placed on record shows that the said boundaries are incorrect.

5. The Appellate Court while dismissing the Misc. Civil Appeal filed by the petitioner has observed that after perusing the map issued by the revenue authorities, filed by the plaintiff, it is seen that four boundaries, which are revealed from the said map, are

different and this aspect cast hurdle for identification of the exact location of the suit property. The defendants filed documents on record that they have preferred appeal before the Superintendent of Land Record, in which, they have challenged the consolidation scheme.

6. In light of these facts, the Trial Court ought to have allowed the petitioner to carry out the amendment and to mention the correct boundaries. The burden would be on the petitioner to prove the said location and correct boundaries. It is not possible to accept the arguments of the learned Advocate for the respondents/defendants that the petitioner has given admission, which he is trying to withdraw. Both parties are at liberty to prove exact location and four boundaries of the suit property. The merit of the amendment cannot be gone into at this stage and since this appears to be technical error, the amendment proposed by the petitioner deserves to be allowed.

7. The Trial Court while rejecting the amendment proposed by the petitioner has erred in holding that the plaintiff is going to change the description of the property and the amendment proposed by him is contrary to the documentary evidence filed by him. The approach of the Trial Court appears to be hyper technical and cannot be sustained.

8. In the result, the following order:

ORDER

(i) The writ petition is allowed.

(ii) The impugned order dated 04/02/2019, passed by the learned 2nd Joint Civil Judge, Junior Division, Gangapur, District Aurangabad below Exhibit-26 in Regular Civil Suit No.145/2017, is hereby quashed and set aside.

(iii) Application (Exhibit-26) is allowed.

9. The learned Advocate for the petitioner, at this stage, submits that affidavit in lieu of examination in chief is already filed by the petitioner/plaintiff and the same is also permitted to be amended by correcting the boundaries.

10. It is made clear that observations and this order are prima facie and shall not influence the Trial Court while deciding the suit on merits.

11. All contentions of respective parties are kept open.

[NITIN B. SURYAWANSHI, J.]