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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9547 OF 2016

Ashok Dallomal Nathani
Age – 55 years, Occ – Business,
R/o Old Sindhi Colony,
Nandurbar

PETITIONER

VERSUS

Trilokchand Sugnomal Dhanwani (Sindhi)
Since died, through LRs.

RESPONDENT

1. Gangadas Trilokchand Sindhi
Age – 30 years, Occ – Business,
R/o Bl. No. 3, Room No. 10
Old Sindhi Colony, Nandurbar
2. Prakash Trilokchand Sindhi
Age – 30 years, Occ – Business
R/o Plot No. 72, Nagai-Nagar
Nandurbar
3. Draupatibai d/o Trilokchand Sindhi
Age – 40 years, Occ – Household
R/o Plot No. 72, Nagai-Nagar
Nandurbar
4. Ratnabai Jagdish Ahuna
Age – 35 years, Occ – Household
R/o Sindhi Colony, Near Jayalakshi Kirana
Bhandar, Uman Nagar, Nasik
5. Shantabai Rameshlal Sindhi
Age – 32 years Occ – Household
R/o House No. 525, Ramnagar
Surat, Gujarath
6. Rekhabai Jitendrakumar Sindhi
Age – 30 years, Occ – Household
R/o Near Jhulelal Temple
Sindhi "Colony, Malkapur

Taluka – Malkapur, District – Buldhana

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Mr. Rahul R. Sancheti, Advocate for the petitioner
Mr. Subodh P. Shah, Advocate for the respondents
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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON : 28th MARCH, 2022
PRONOUNCED ON : 12th APRIL, 2022

ORDER:

1. This petition takes exception to the order passed by the learned Civil Judge, Senior Division, Nandurbar below Exhibit-15 in Regular Civil Suit No. 8 of 2005, thereby partly allowing the application filed by the petitioner-plaintiff under Order VI, Rule 17 of the Civil Procedure Code (for short "CPC").
2. The petitioner, original plaintiff, filed the said suit seeking injunction against the defendants – respondents from restraining them from disturbing his peaceful possession over suit land i.e. Block No. F/3/10/A out of Survey No. 170 of Old Sindhi Colony, Nandurbar, an open plot admeasuring 20X40 feet, which is given Tenement No.F/3/10/B.
3. The defendants appeared in the suit and resisted the claim of the petitioner – plaintiff. In the said suit, an application Exhibit-15 was filed by the petitioner – plaintiff under Order VI, Rule 17 of the CPC thereby proposing amendment contending

that in the plaint and in the report of the Commissioner, there is difference of boundaries of the suit property and after verification of the boundaries from the relevant record, it transpired that as the plaintiff could not realize the proper directions and, therefore, incorrect boundaries are mentioned, which need to be corrected. Thereafter, the plaintiff proposed an amendment in paragraph No.4 of the application, seeking to incorporate as paragraph No.3-A in the plaint, to the effect that it appears that the government has allotted different land to the defendants in Sindhi Colony and the defendants have no right on the said land allotted to the plaintiff and, therefore, the defendants have no right to interfere in the peaceful possession of the plaintiff over the suit property. The defendants are trying to claim right on the suit property, on the basis of allotment in their favour. The plaintiff, therefore, claimed that the amendment be permitted.

4. The trial court partly allowed the said application and permitted the plaintiff – petitioner to carry out amendment in the plaint under paragraph No.3 in respect of boundaries of the suit property, however, rejected the amendment proposed in paragraph No.4 of the application (proposed amendment in paragraph No.3-A). The petitioner is aggrieved by this order.

5. Heard learned advocate for the petitioner and learned advocate for the respondents.

6. Learned advocate for the petitioner submits that the trial court has erred in rejecting the amendment proposed in paragraph No.4 of the application Exhibit-15. By relying on a decision of the Supreme Court in the case of "**Panchdeo Narain Srivastava V/s Km. Jyoti Sahay**" 1983 AIR (SC) 462 and also an unreported judgment of the Supreme Court in **Civil Appeal No. 4568 of 2018 dated 27th April, 2018 (Gurbaksh Singh and Others V/s Buta Singh and Another)**, he submits that by amendment, even an admission of the party can be withdrawn or explained away, if the amendment is necessary for resolving the real controversy between the parties. He, therefore, submits that the impugned order cannot be sustained and the amendment application filed by the petitioner deserves to be allowed in toto.

7. On the other hand, learned advocate for the respondents – defendants, supports that the impugned order. By relying on two judgments of this Court in "**Rasiklal Manikchand Dhariwal and Others V/s Kishore Washwani and Nitesh Ashok Wadhwani**" 2005 (2) Mh.L.J. 611 and "**Moolji Lukhmidas V/s S. M. Kapadia**" 2006 (6) Bom. C.R. 443, he submits that the crucial admission given

in favour of the defendants is sought to be withdrawn by the petitioner – plaintiff, by the proposed amendment, which will cause serious prejudice to the case of the defendants. According to him, there is no substance in the writ petition and the same may be dismissed.

8. In the plaint, the plaintiff has averred that -

“the plaintiff has cabin in the suit property and he had demanded the said land from the government and though the defendant knew this fact, without mentioning the same, he had applied to the Tahsildar for allotment of the same plot, when application of the plaintiff seeking allotment of the suit plot was pending and though the said plot was in possession of the plaintiff, without conducting proper and legal inquiry and without issuing notice to the plaintiff, without hearing him, the concerned revenue officers, by joining hands with the defendants, illegally and without any valid order, allotted said plot to the defendant vide order dated 20th September, 1996 and though the plaintiff was in possession of the said plot, the same was recorded in the name of the defendants, by entry No. 11759, which is certified without any inquiry. Therefore, the order of the Tahsildar and entry No. 11759 are illegal and are liable to be set aside and the defendant has no right or title on the suit plot.”

Now, by way of amendment, the petitioner – plaintiff is trying to dispute the validity of grant of plot allotted to the defendants by the government.

9. Admittedly, the suit is filed simplicitor for injunction. The

petitioner has to prove his lawful possession over the suit property and the obstruction to the same by the defendants. By the proposed amendment, the petitioner – plaintiff is trying to introduce altogether new case in respect of plot allotted in favour of the defendants. The admission given by the petitioner – plaintiff in the plaint that the defendants were allotted the plot by the revenue authorities is sought to be withdrawn by the petitioner – plaintiff by trying to introduce a new case, which cannot be permitted. The amendment sought by the petitioner is likely to cause serious prejudice to the defendants – respondents. The amendment was not proposed before commencement of the trial.

10. The trial court has rightly exercised its jurisdiction while passing the impugned order, which is a reasoned order and no case is made out by the petitioner to interfere in the said order.

11. In "***Panchdeo Narain Srivastava***" (*supra*), it is held that the amendments seeking withdrawal of admission of fact was allowed by the trial court for effective adjudication of the dispute and the high court was not justified in interfering in the said order. It is held that it cannot be said that by amendment an admission of fact cannot be withdrawn and a admission made by a party may be withdrawn or explained away.

12. In "**Gurbaksha Singh and Others**" Civil Appeal No. 4568 of 2018, it is held that -

“the object of the rule is that courts should try the merits of the case that come before them and should, consequently, allow all amendment that may be necessary for determining the real question in controversy between the parties, provided it does not cause injustice or prejudice to the other side. This Court, in a series of decisions has held that the power to allow the amendment is wide and can be exercised at any stage of the proceeding in the interest of justice. The main purpose of allowing the amendment is to minimise the litigation and the plea that the relief sought by way of amendment was barred by time is to be considered in the light of the facts and circumstances of each case.”

In the present case, a new case is sought to be introduced by the plaintiff by way of the proposed amendment, which is not necessary for determining the real question in controversy between the parties. Considering the facts of this case, it is not necessary to allow the amendment sought by the petitioner. In that view of the matter, both the citations relied upon on behalf of the petitioner – plaintiff are of no help to him.

13. In "**Mooljee Lakhimdas**" (*supra*), a co-ordinate bench of this court has held thus -

“Under Order 6, Rule 17 of the Code of Civil Procedure, powers of the Court are wide enough to allow the parties to amend the

pleadings as long as such amendment does not cause injustice to other party and / or cause him injury which could not be compensated in costs. It is well settled that inconsistent and contradictory allegations in negation to the admitted position of facts or mutually destructive allegations of facts should not be allowed to be incorporated by means of amendment of the pleadings. Admission or withdrawal of admission cannot be rendered nugatory by allowing the amendment causing serious prejudice or injury to the other side.”

14. The above observations support the case of the respondents – defendants. Since the amendment proposed by the petitioner plaintiff introduces altogether new case and if allowed, it would prejudicially affect the interest of the defendants, the petitioner – plaintiff was rightly denied permission to carry out the proposed amendment as sought in paragraph No.4 of the application Exhibit-15.

15. For the aforesaid reasons, there is no substance in the challenge raised by the petitioner. No case is made out by the petitioner plaintiff to exercise extraordinary writ jurisdiction. Writ petition, therefore, dismissed. No costs.

[NITIN B. SURYAWANSHI]
JUDGE