

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13507 OF 2021

BALASAHEB VISHWANATH KAKADE
VERSUS
GANESH BALASAHEB NANEKAR AND OTHERS

Advocate for Petitioner : Mr. Bhagwat A. Shinde
Advocate for Respondents No. 1 to 3: Mr. H.S. Bhambare

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 13th JUNE, 2022

ORDER :

1. This petition impugns order passed by Civil Judge Senior Division, Gangakhed, below Exhibit-42 in Special Civil Suit No. 08/2015 to the extent it rejects prayer of the petitioner for amendment of application Exhibit-5 and order passed thereon.

2. The petitioner/plaintiff filed a suit for specific performance of contract against the defendant No. 1 in respect of agricultural land gat No. 121 admeasuring 6 Hectare 96R, to the extent of 80R situated at village Palodi, Taluka- Manwath, District- Parbhani (for short 'suit land'). Application Exhibit-5 for temporary injunction is allowed in favour of petitioner on

18.04.2016 thereby directing the defendant not to alienate and/or create third party interest in the suit property.

3. The petitioner/plaintiff thereafter filed application Exhibit-42 under Order VI Rule 17 read with Section 15 of Code of Civil Procedure praying for amendment in the plaint, application Exhibit-5 and the order passed thereon seeking to correct 'Gut No. 221' as 'Gut No. 121'. This application is partly allowed by the Trial Court thereby permitting the plaintiff to carry out the amendment in the plaint only. The petitioner is aggrieved by this order, by which his proposed amendment in the application Exhibit-5 and in the order passed thereon is rejected.

4. Heard the learned advocate for the petitioner and learned advocate for respondents No. 1 to 3. Perused the documents placed on record.

5. From the documents placed on record it is clear that there was inadvertent error on the part of the petitioner/plaintiff while mentioning gut number. The same appears to be *bonafide* typing mistake. The Trial Court is justified in allowing the

petitioner/plaintiff to amend the plaint by mentioning correct gut number.

6. However, the Trial Court has erred in rejecting the prayer of the petitioner/plaintiff seeking amendment in application Exhibit-5 and order passed thereon, on the sole ground that said application is decided on merits. Merely, because said application is decided on merits that by itself cannot be a ground to deny amendment sought by the petitioner/plaintiff. The Trial Court has failed to take into consideration the provision of Section 152 of Code of Civil Procedure, 1908.

7. Section 152 of Code of Civil Procedure, 1908 reads thus:-

"152. Amendment of judgments, decrees or orders.- Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties."

8. In view of Section 152, the Trial Court ought to have allowed the petitioner/plaintiff to correct gut number in

application Exhibit-5 and thereafter, the Trial Court ought to have corrected the order passed below Exhibit-5. The impugned order is, therefore, unsustainable in the light of aforesaid provision. In the result, following order:-

ORDER

- i). The impugned order dated 25.10.2021 passed below Exhibit-42 in Special Civil Suit No. 8/2015, to the extent it rejects claim of the petitioner in respect of amendment in application Exhibit-5 is quashed and set aside.
 - ii). Application Exhibit-42 is allowed.
 - iii). The petitioner/plaintiff is permitted to amend application Exhibit-5 by correcting gut number.
 - iv). The Trial Court is directed to correct order dated 18.04.2016 passed below Exhibit-5 by substituting gut No. 121, in place of gut No. 221.
9. The Trial Court shall make every endeavor to expedite the trail of the suit.

**[NITIN B. SURYAWANSHI]
JUDGE**