

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6148 OF 2022

Smt. Sulabha N. Gadre and Ors. ...Petitioners

V/s.

Shri. Shankar B. Warang and Ors. ...Respondents

Mr. Mahesh V. Rawool, Advocate for the petitioner.

Mr. Gangadhar J. Sabnis, Advocate for the respondent.

CORAM : SANDEEP K. SHINDE, J.

RESD. ON : 13TH SEPTEMBER, 2022.

PRON. ON : 19TH SEPTEMBER, 2022.

P.C:

1. This petition under Article 227 of the Constitution of India, takes exception, to the order dated 21st March 2022, by which leave to amend the Written Statement, was refused as sought by the defendants under Order 6 Rule 17 of the Civil Procedure Code.

2. For the sake of brevity, the petitioner and the respondents shall be referred as per the original nomenclature.

Background facts are like this :

3. Plaintiffs instituted Regular Civil Suit No. 233/2012 seeking declaration that the defendants do not have a right to way or access over their land Survey No.28 Hissa No.5. Consequential relief, is to restrain the defendants from disturbing their possession in the land Survey No.28 Hissa No.5. The defendants asserted their right of way on the land of the plaintiffs, on the strength of the registered sale-deed dated 26th March 1999, executed in their favour by Mr. Pratap Ramchandra Warang. Defendant's case is, vide said sale-deed, Mr. Pratap Ramchandra Warang, sold land bearing Survey No.20, Hissa No.4 to them with right of way, on plaintiff's land Survey No.28/5 to approach public road. Defendants pleaded, except the access provided through the land of plaintiffs, there is no other access or road available to them to reach the public road. Besides, the defendants also relied on the Affidavit of Mr. Pratap Ramchandra Warang, which

reiterates the right to use the road/access that passes through the plaintiff's land. The parties to the suit have led the evidence and witnesses have been cross-examined. It is at this point of time in January, 2022, the defendants filed an application under Order 6 Rule 17 seeking leave to amend the Written Statement. The amendment sought by the defendants was to the extent of placing a 'sketch of map', which clarifies, the access available to the defendants through the plaintiff's land, for approaching the public road. The defendant's case is that the proposed amendment i.e. placing a rough sketch, does not amount to introducing a new cause of action nor it causes prejudice or result in injustice to the plaintiffs. Submission is that, amendment is required for effective and proper adjudication of the controversy between the parties. The learned trial Court, refused leave to amend the Written Statement on the ground that the defendant did not plead, that inspite of due diligence, he could not amend his Written Statement before commencement of the trial.

4. Heard learned Counsel for the parties. Perused the Written Statement of the defendant, application seeking

leave to amend the Written Statement and the impugned order.

5. In consideration of the facts of the case, although it is correct that the amendment sought by the defendant would aid in rendering a more satisfactory decision and further it does not cause injustice to the plaintiff nor the proposed amendment seeks to withdraw any clear admission made by the defendants, which confers right on the plaintiffs, yet the fact cannot be ignored that the defendants have moved an application seeking to amend the Written Statement, at the fag end of the trial. Although, settled law is, that all amendments are to be allowed which are necessary for determining the real question in controversy, but, in terms of proviso to Order 6 Rule 17 of the Code, the Court's jurisdiction in allowing the application to amend pleading is taken away, unless condition precedent therefor are satisfied. The settled law is, if an application for amendment of the pleadings filed after commencement of trial besides jurisdictional fact of necessity to determine the real question of controversy between the parties, one more jurisdictional fact to be established, which is exercise

of due diligence. In the case at hand, the application seeking amendment does not plead as to why and which circumstances prevented the defendants to seek the amendment before commencement of the trial. The Written Statement in this case was filed in 2012. Amendment was sought nearly after ten years. Over and above, parties to the suit have led the evidence and suit is, now posted for arguments. Therefore, although the amendment does not withdraw any clear admission, but for want of due diligence, I am not inclined to interfere in the impugned order. The petition is dismissed and disposed of accordingly.

(SANDEEP K. SHINDE, J.)