

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION 445 OF 2012

Singh quarry Equipment (P) Ltd. ...Petitioner
vs.
Precision Forging & Stamping & Ors. ...Respondents

Mr.M.M. Sathye with Mahendra Agvekar and Shraddha Chavan i/b. Sachin Gorwadkar for Petitioner.

Mr.S.S. Kanetkar for Respondent 1.

Mr.G.S. Hegde i/b. A.R. Bhole & Co. for Respondents 6 and 7.

CORAM : ROHIT B. DEO, J.

DATED : 11 JULY 2022

PC. :

1. The Petitioner is the plaintiff in Special Civil Suit 459/2010 which is brought for specific performance of contract and in alternate, for damages and recovery of money.

2. In the plaint as originally instituted, the suit property is described thus :

“1) Description of Property : All that piece and parcel of vacant Plot bearing No.12 out of the original allotted Plot No. 25/1 owned by M.I.D.C. in Satpur M.I.D.C. area having admeasuring total area 7990 Sq.Mtrs. with boundaries of Plot No.25/1 as follows :

On or towards East : Plot No. 25/2/7, 25/2/4, 25/2/3
25/2/2, 25/2/1 & Road named C
in M.I.D.C. area
On or towards West : Plot No. 24, 26 & Road,
On or towards South: Street No. 4
(adm. width 25.4 Mtrs)

On or towards North: Street No. 13

And the captioned property which is the subject matter of the said suit is Plot No. 12 in original Plot No. 25/1 as per the lay-out map prepared by the Defendant No.1 in the name of "Proposed Industrial Maxco Co-op. Society Ltd., MIDC Satpur" bounded by the boundaries as follows :

On or towards East : Vacant Plot No. 25/2/7 &
thereafter existing Road
On or towards West : Remaining area not under
the lay-out
On or towards South: Open Space 4435.00 Sq.Mtrs
On or towards North: Existing Road (MIDC)"

3. The contesting defendant filed written statement and in paragraph 17 asserted that the description of the suit property is incorrect and that plot 25/1/1 which is held by defendant 1 as lessee of Maharashtra Industrial Development Corporation has not been subdivided neither has MIDC approved or sanctioned such subdivision or revised layout. Defendant 1 further asserted that he has no authority to subdivide the plot.

4. In view of the said contention in paragraph 17 of the written statement, the plaintiff preferred an application seeking to amend the description of the suit property. Notably the plaintiff did not seek any amendment in the area of the suit property. In essence, the plaintiff sought to incorporate that the words "plot 25/1/1" be substituted for "plot 25/1" and the total area be referred to as 62729 sq.mtrs. The plaintiff further clarified that out of the total area of 62729 sq.mtrs., he is restricting claim to the suit property admeasuring 7990 sq.mtrs.

5. Surprisingly, one of the reasons recorded by the learned trial Judge for rejecting the application under Order 6 Rule 17 of CPC, which

was preferred before the commencement of the trial, is that the plaintiff ought to have waited till the recording of the evidence for seeking the amendment. Even *dehors* the obvious misconception, I am satisfied that the learned trial court was not justified in rejecting the amendment which merely seeks to correct the description of the suit property and that too, before the framing of issues.

6. The order impugned is set aside.

7. The application, Exhibit 35, preferred by the plaintiff under Order 6 Rule 17 is allowed.

8. Needless to observe that the defendants shall be entitled to consequentially amend the written statement, if deemed fit.

9. All contentions are kept open.

10. The plaint be amended within four weeks.

11. The petition is disposed of in the aforestated terms.

12. Parties and the learned trial court shall act on the authenticated copy of this order.

(ROHIT B. DEO, J.)