

Anand

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

WRIT PETITION 7682 OF 2022

Raosaheb Prashuram Hankare .Petitioner

Vs.

Balasaheb Laxman Patil & anr. .Respondents

Mr. Mahindra B. Deshmukh, Advocate, for the Petitioner
None for the Respondents

CORAM : ROHIT B. DEO, J.

DATE : 06.07.2022

P. C.

. The Petitioner is assailing the Order dated 01.04.2022 rendered by the learned 5th Jt. Civil Judge, Senior Division, Sangli in R.C.S. 155 of 2019, whereby the Application preferred by the Plaintiff under O. VI, Rule 17 of the Code of Civil Procedure, 1908 is allowed.

2. The Application is preferred after framing of issues, but before the Plaintiff filed on record the Affidavit in lieu of oral examination-in-chief.

3. The suit is instituted seeking decree of perpetual

injunction restraining the Defendants from disturbing the possession of the Plaintiff qua the suit property.

4. In para 1 of the plaint, the suit property is described as residential house and open land within the territorial jurisdiction of the Sangli, Miraj & Kupwad Municipal Corporation which is assigned City Survey 3298 admeasuring 209.7 Sq. Meter in entirety. According to the Plaintiff, the Defendant is the owner of land admeasuring 100 Sq. Meter while the Plaintiffs are the owners of land admeasuring 209.7 Sq. Meter.

5. The proposed amendment seeks to correct the description of the suit property. While the learned counsel for the Petitioner would argue that the proposed amendment seeks to introduce a new property, the said submission cannot be accepted and the learned trial Judge is right in rejecting the said submission.

6. What is discernible from the proposed amendment, is that the Plaintiff made a reference to certain

proceedings initiated by the then Tahsildar, Miraj. The Plaintiff contends that the suit property was initially included in Survey 2. Plots were carved out from Survey 2 and allotted by the Government to the landless and agricultural labours for constructing residential house. According to the Plaintiff, other than the plots allotted by the Government, the remaining part of Survey 2 is in their possession. The Plaintiff then contends that the Defendant is claiming through one such allottee of the plot - Prashuram Vithoba Hankare. The plot allotted to the predecessor of the Defendants was assigned Plot 1 in accordance with the allotment by the Tahsildar. However, the plaint incorrectly makes a reference to the said plot as Plot 4. It is on this premise that the Plaintiff contends that correction in the description of the suit property may be permitted. The other amendment sought is impleadment of Vilas Prashuram Hankare, who is the brother of the Defendant. Mr. Vilas Hankare. He is sought to be impleaded, since in the revenue record his name is also reflected alongwith the Defendants.

7. I am satisfied that the proposed amendment

merely seeks to correct the description and there is no reason why such amendment should be dis-allowed. I also do not feel that the proposed amendment seeking to implead brother of the Defendant ought to be dis-allowed. It is clarified that the proposed Defendant 2 shall be free to object to his impleadment, if so advised and such objection if lodged shall be adjudicated on its own merits.

8. Subject to what is observed supra, Petition is dismissed.

(ROHIT B. DEO, J.)