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

WRIT PETITION 9697 OF 2012

Shri Abhay Shantilal Shah and Ors. ... Petitioners
Versus
Shri Padmakar Kanhu Gaikar and Ors. ... Respondents

Mr. Bhushan A. Walimbe for the Petitioners.
Mr. Rohit D. Joshi for the Respondents 1 and 2.

CORAM: ROHIT B. DEO, J.
DATE : 1st JULY, 2022

P.C. :-

. The petitioners are the plaintiff who preferred an application, seeking amendment of the plaint in suit for specific performance.

2. The proposed amendment is in two parts.

3. The first part is restricted to correcting the description of the suit property as survey 125-/2A instead of 125/2 as originally mentioned. The other part seeks incorporating relief of declaration that the sale deed dated 14th November, 2006 which is executed between the defendants-*interse* is illegal.

4. This Court vide order dated 26th February, 2013 has restricted the notice only to correcting the description of the property. Since, no step appears to have been taken by the petitioners to seek review of the observations in the order dated 26th February, 2013, I need not delve deeper.

5. However, what I find is that the necessary pleading has been incorporated in paragraphs 8, 11 and 13 *qua* the sale deed 14th November, 2006 and all that was prayed is the incorporating of the relief.

6. Be that as it may, insofar as correction of the description of the property, the learned counsel for the respondents herein fairly has no objection. In any event, the proposed amendment does not seek to introduce new property as such and only seeks to correct the description.

7. The order impugned is set aside to the extent the petitioners are not permitted to correct the description of the property.

8. Insofar as significance and implication of this Court restricting the notice to the proposed amendment which seeks to correct the description of the suit property, suffice it to record, that in the civil suit the defendants have taken a stand that the plaintiffs are not entitled to seek a declaration of invalidity of sale deed executed subsequent to the suit agreement. The question whether, in the facts of the case, it was obligatory for the plaintiffs to seek declaration on invalidity of sale deed dated 14th November, 2006 is left open for the Trial Court to address and adjudicate at the stage of final hearing.

9. Petition is partly allowed in the aforestated terms.

[ROHIT B. DEO, J.]