

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

40 WRIT PETITION NO.4627 OF 2022

**SANJAY SHANKAR RATHOD AND ANOTHER
VERSUS
THE COLLECTOR OSMANABAD AND OTHERS**

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Advocate for Petitioners : Mr. Ajay Shinde
AGP for Respondent – State : Mrs. G.L. Deshpande
Advocate for Respondent No.2 : Mr. B.M. Dhanure
Advocate for Respondent No.3 : Mr. E.S. Murge

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CORAM : SHARMILA U. DESHMUKH, J.

DATE : 01-02-2023

PER COURT :

. Heard.

2. By this petition, the petitioners challenge the order dated 23.10.2021 passed by Jt. Civil Judge Senior Division, Omerga in Special Civil Suit No.14 of 2017 rejecting the petitioners' application for amendment of the plaint. Special Civil Suit No.14 of 2017 was instituted by the petitioners seeking a declaration of ownership in respect of Gat No. 37 to the extent of 60 R and for direction against the defendant nos.1 and 2 from disbursing the amount of compensation to the defendant no.3.

3. It is the case of the petitioners in the plaint that the petitioners had purchased property bearing Gat No. 37 to the extent

of 60 R out of the total property belonging to the defendant no.3 admeasuring about 5 Hector. It is the case of the petitioners that in the sale-deed of the year 1991 the boundaries which were shown was in respect of Gat No.67 which admittedly did not belong to the defendant no.3 and the defendant no.3 was not agreeable to the execution of the deed of rectification to the said sale deed of the year 1991.

4. In the year 2013 the National Highway Authority had acquired the part of the property which has led to the dispute between the parties inasmuch as the petitioners claim that the property which has been acquired forms part of the property which has been purchased by the petitioners. The petitioners therefore filed Special Civil Suit No.14 of 2017. During the pendency before the trial Court, the amount of compensation came to be disbursed to the defendant no.3 and in respect of the recovery of the said amount, which allegedly was wrongly disbursed to the defendant no. 3, a notice dated 17.07.2019 was issued by the competent authority. In spite of the order of the competent authority to refer the dispute to the civil court, erroneously the amount of compensation came to be deposited in the bank account of the defendant no. 3 and that in respect of recovery of the said amount, the notice has been issued on

17.07.2019. The petitioners sought proposed amendment to the plaint to place on record that the amount of compensation has now been constituted as the charge on the property of defendant no.3 and a relief that the defendant nos.1 and 2 be directed to recover the amount of compensation disbursed to the defendant nos.3 and to deposit the same in the trial Court.

5. With these amendments, the application was moved before the trial Court which rejected the application primarily on two grounds, firstly considering the proviso to Order-VI, Rule-17 of the CPC the amendment being post trial amendment the application did not offer sufficient explanation as to whether the said facts were not within the knowledge of the petitioner prior to filing of the suit and secondly that in support of the proposed amendment there are no documents which have been produced by the petitioners.

6. Heard the learned counsel appearing for the parties.

7. The petitioners filed Special Civil suit No. 14 of 2017 seeking a declaration in respect of ownership of Gat No. 37 and a relief was also sought to direct the defendant nos.1 and 2 not to disburse the amount of compensation to the defendant no.3. During

the pendency of the proceedings, the amount of compensation has been disbursed to the defendant no.3. The issue whether the same has been rightly disbursed or whether the petitioners are entitled to the same, will be the subject matter of the trial for which the necessary evidence will have to be led by the parties. At this stage, what has to be considered is, whether the amendments are necessary for deciding the issue and as to whether the refusal of the amendments would amount to the multiplicity of the proceedings.

8. Considering the nature of the suit, which seeks a direction to the defendant nos.1 and 2 not to disburse the compensation to defendant no.3, the proposed amendment in respect of the subsequent fact about disbursement of the compensation amount to defendant no.3 and the issuance of the recovery notice and the charge being created on the property of the defendant no. 3, in my opinion, will be necessary for deciding the relief sought in the plaint. The proposed amendment do not change the nature of the suit and it is well settled that all amendments are to be liberally allowed in order to avoid the multiplicity of the proceedings. In the event the proposed amendments are not allowed, the petitioners will be compelled to file separate suit for recovery of the compensation which will lead to multiplicity of the proceedings, which is the precise

reason for which the various judicial pronouncements have held that all amendments have to be liberally allowed. At this stage of considering the application for amendment, the merits of the amendments are not required to be gone into which is one of the reasons that the trial Court has refused the amendment. As regards the proviso to Order-VI, Rule-17 is concerned, the issues have been framed on 15.02.2019 and the date has been fixed for leading of evidence but the affidavit of evidence has not yet been filed. Considering the fact that the proposed amendments are in tune with the relief sought in suit and do not change the nature of the suit and further refusal of amendment would lead to multiplicity of the proceedings and cause prejudice to both the parties, the amendment, in my opinion, ought to have been allowed.

9. Learned counsel for the respondent no.3 submits that by reason of the charge being created on his property for the reason of pendency of the present proceedings, great prejudice would be caused to him and seeks expeditious disposal of the Special Civil Suit No.14 of 2017.

10. Considering the above, the following order is passed.

ORDER

(i) The impugned order dated 23.10.2021 is hereby quashed and set aside.

(ii) The amendments to be carried out on the next date before the trial Court.

(iii) The trial Court is directed to decide the Special Civil Suit No.14 of 2017 expeditiously and in any event within a period of one year from the date of this order.

(iv) Both the parties to co-operate to the trial Court in disposal of the suit and will avoid unnecessary adjournments.

. Writ petition is allowed in the aforesaid terms.

(SHARMILA U. DESHMUKH, J.)