

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

36 WRIT PETITION NO.11958 OF 2022

UTTAMRAO RAMLAL RATHOD AND OTHERS
VERSUS
BAPURAO DAMODHAR RATHOD

Mr. Pavankumar S. Agrawal, Advocate for the Petitioners.
Mr. K.A. Ingle, Advocate for the Respondent No.1.

CORAM : SHARMILA U. DESHMUKH, J.
DATED : FEBRUARY 15, 2023.

PER COURT :

1. Heard.
2. Petitioners are aggrieved by the rejection of their application below Exh.28 in RCS No.89 of 2018 seeking amendment of plaint.
3. RCS No.89 of 2018 was instituted by the petitioners seeking declaration of ownership in respect of land survey No.41 admeasuring 1 H 25 R situated at village Kadapdev and for perpetual injunction against the Respondents and for a declaration that the decree passed in RCS No.58 of 2013 is not binding on the petitioners. After the issues were framed, an application came to be filed by the petitioners seeking to elaborate on the pleadings. The proposed amendment seeks

elucidation of the pleadings in support of the relief that the decree passed in RCS No.58 of 2013 is not binding on the petitioners.

4. The Trial Court has rejected the application on the ground that at the time of institution of suit, the necessary relief was claimed and as such, there should have been pleadings as to how and why the decree is not binding. The trial Court observed that allowing the amendment would amount to permitting the petitioner to fill up lacuna in the suit.

5. The position in law as far as the amendment is concerned, is well settled and all amendments are to be allowed liberally provided it is a pre-trial amendment. In case of post-trial amendment, the provisions are circumscribed, inasmuch as a limitation is imposed that the application should make out a case that the petitioners were not aware of the fact in spite of due diligence or after exercise of due diligence, the said fact could not have been raised at the time when the trial has commenced. In the present case, although the issues have been framed, the affidavit of evidence has not been filed and as such it cannot be said that the proposed amendment is for the purpose of filling up the lacuna. The factual background in respect of the proposed amendment has already been set out in the plaint and the petitioners seeks to elaborate the pleadings in support of the relief, which, in my view, is required to be allowed as the

proposed amendments do not change the nature of suit or seek to introduce a new cause of action.

6. For the reasons above, writ petition is allowed. The impugned order dated 11th March, 2022 is hereby quashed and set aside and the application below Exh.28 for amendment of the plaint stands allowed.

(SHARMILA U. DESHMUKH, J.)