

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

33 WRIT PETITION NO.2194 OF 2019

**SADASHIV NARAYANRAO SHINDE
VERSUS
MANIK TUKARAM SHINDE AND OTHERS**

...
Advocate for Petitioner : Mr. Pravin N. Kalani
Advocate for Respondent Nos.1 to 3 : Mr. Eknath P. Sawant
...

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 24-02-2023

PER COURT :

. Heard.

2. The challenge in the petition is to the order dated 25.07.2018 passed by the trial Court in R.C.S. No.86 of 2015 rejecting the petitioner's application for amendment of the plaint. R.C.S. No.86 of 2015 was instituted by the petitioner seeking a decree of perpetual injunction restraining the defendants from interfering with the peaceful possession of the petitioner – plaintiff in respect of the suit properties.

3. Subsequently an application for amendment was filed on 11.07.2018. By the said application it was stated that on 08.04.2018 the petitioner had carried out measurement of his land through one M.K.K. Consultant Private Ltd and there are certain facts which are

come on record which are necessary to be placed. By the proposed amendment, the petitioner sought to correct the description of the boundaries as it came to his notice after the measurement map prepared by M.K.K. Consultant Private Ltd that there was a canal in the suit land. The other amendment which was proposed was in the body of the plaint placing on record the position that the measurement as such was carried out by the petitioner through M.K.K. Consultant and for placing the measurement map on record.

4. The application came to be opposed by the respondents - defendants.

5. The learned counsel appearing for the petitioner submits that it is only after map was prepared from M.K.K. Consultant Private Ltd that it came to his knowledge that there is a canal within the suit land and as such by the proposed amendment he seeks to correct the boundaries whereby the land stands reduced than earlier.

6. Per contra, the learned counsel for the respondents supports the impugned order and submits that the trial Court has considered the proposed amendment and has observed that by way of amendment the petitioner wants to change the description of the property and by changing the boundaries of the suit, obviously nature

of the suit will be changed. He further submits that in event the petitioner wants to rely on the measurement map, the present suit can be withdrawn and a fresh suit by placing the new boundaries on record can be filed.

7. Considered the rival submissions of the parties.

8. The purpose of allowing amendment to the proceeding is to minimize the litigation. The submission of the learned counsel for the respondents, if accepted would lead to multiplicity of the proceedings. By the proposed amendment, the petitioner seeks to place on record the measurement report which was obtained during the pendency of the proceeding from M.K.K. Consultant Private Ltd. It is trite that while considering the application for amendment under Order-VI, Rule-17 of the CPC the merits of the amendment is not required to be gone into, which has done by the trial Court in the present case. R.C.S. No.86 of 2015 has been filed seeking the relief of perpetual injunction in respect of the suit property. By correcting the boundaries, the issue which is pending adjudication would be effectively adjudicated as the order, if any, will be passed in respect of the correct property. Considering the above, the finding of the trial Court that the proposed amendment is not necessary for the final

adjudication of the controversy, cannot be sustained. It is also not clear as to how by correcting the description of the property the nature of the suit will change inasmuch as the suit will remain as a suit seeking perpetual injunction.

9. The learned counsel appearing for the respondents has also submitted that during the proceedings the Court had got the land measured through the T.I.L.R. and that report is also on record. Be that as it may, by the proposed amendment the petitioner is seeking to place on record the subsequent map, which has been obtained through M.K.K. Private Consultant Private Ltd. All objections which are required to be taken, can be taken during the hearing and authenticity of the map can be tested at the time of the trial. In the present case, the issues have been framed and the affidavit of evidence on behalf of the petitioners has not yet been filed. Although it is trite that after framing of the issues the amendment, if any, will amount to post trial amendment, considering that the petitioners seek to correct boundaries which will be necessary for effective adjudication of the dispute between the parties, in my opinion, the amendment is required to be allowed.

10. For the reasons above, petition succeeds. The impugned

order dated 25.07.2018 is hereby quashed and set aside. The application of the petitioner (Exh.78) dated 11.07.2018 stands allowed.

11. Needless to state that the map of the T.I.L.R. which is placed on record cannot be discarded from consideration in view of the subsequent map which has been produced on record and both the maps will be considered at the time of trial for the adjudication.

(SHARMILA U. DESHMUKH, J.)

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