

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9545 OF 2023

Bhagwat Yashwant Desai

... Petitioner

Versus

Vilas Yashwant Desai and Ors.

... Respondents

— —
Mr. P. D. Pise i/by P. Padmanabh and Associates for the Petitioner.
— —

CORAM : SHARMILA U. DESHMUKH, J.

DATE : August 3, 2023.

P. C. :

1. Heard.

2. The challenge in the petition is to the order dated 19th December, 2022 allowing the respondent-plaintiff's application for amendment of the plaint correcting the number of defendant from defendant no.2 to defendant no.3 in the prayer clauses.

3. RCS No.127 of 2014 was instituted by the respondent-plaintiff seeking declaration that the sale deed executed by the defendant no.1 and defendant no.2 in respect of the suit property is not binding on the plaintiff and order of perpetual injunction restraining the defendant nos.1 and 2 from creating any third party

rights in respect of the suit property. By the amendment application, the plaintiff sought to correct the number of defendant no.2 to defendant no.3 in the prayer clauses, which was opposed by the petitioner-defendant. By the impugned order, the amendment has been allowed, giving rise to the present petition.

4. Heard learned counsel for the Petitioner.

5. Learned counsel appearing for the Petitioner submits that the application has been filed at the time of the final arguments and as such, the proviso to Order 6 Rule 17 is applicable. He has further pointed out that in the cross-examination a specific case was put to the Respondent as regards the prayers in the suit. He would further submit that the amendment being a post trial amendment ought not to have been permitted. In support of his submission, he relies upon the decision of the Apex Court in the case of ***Pandit Malhari Mahale vs. Monika Pandit Mahale and Others***, reported in ***(2020) 11 SCC 549***, and the decision in the case of ***Sasa Detergent Division vs. Damodhar S. Mudliyar and Ors.*** reported in ***2012 (2) Mh.L.J. 15***.

6. Considered the submissions.

7. If we peruse the averments in the plaint, paragraph 7 of the plaint specifically avers that defendant no.1 had executed a sale deed in favour of defendant no.3 dated 23rd December, 2013. The amendment which has been sought only seeks to correct the defendant no.2 to defendant no.3 in the prayer clauses. There is no dispute that the relief which is sought is in respect of the sale deed dated 23rd December, 2013, which has been executed by the defendant no.1 in favour of defendant no.3. There is no ambiguity as regards the sale deed and the executants of the documents. Considering the proposed amendment, which only sought correction of the number of defendant, in my opinion, the same can be allowed. The proviso to Order 6 Rule 7 lays fetters on the powers of the Court to allow post trial amendment, however, the same cannot be read to even exclude typographical error especially when the averments in the plaint makes it clear that there was no ambiguity as regards the sale deed as well as the defendants, who had executed the documents.

8. As regards the decision in the case ***Pandit Malhari Mahale*** (supra), there is no quarrel with the proposition, which has been laid down therein, that there has to be exercise of due diligence before a post trial amendment would be allowed. In the said decision, it is not stated as what was the amendment which was sought in that case and this proposition of law cannot be construed that in no case post trial amendment, even to correct the typographical error, cannot be permitted.

9. As regards the decision of this Court in the case of ***Sasa Detergent Division*** (supra) is concerned, in the facts of that case, the agreement referred to the suit property as survey no.141/1 and 141/3 and the amendment sought was as regards the correction of survey number from 141/1 to survey no.41. In that case, the Court considered the position that the agreement refers to the property as Survey No.141/1 and 141/3 and therefore, unless the said documents are corrected, it was questionable whether the plaintiff would be entitled to seek the amendment insofar as description of the suit property is concerned. In the present case, no such situation arises in the correction of a typographical error.

10. In view of the above, the petition fails and stands dismissed.

(Sharmila U. Deshmukh, J.)