

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7180 OF 2023

Dhiren alias Dhirendrakumar Kurani

S/o Shantilal Jethalal Kurani

...Petitioner.

Versus

Ashok Shantilal Kurani & Ors.

..Respondents.

Mr. Aditya Bendre for the petitioner.

Mr. D. D. Shinde and Mr. Yogesh Thorat for respondent No.1.

Coram : Sharmila U. Deshmukh, J.

Date : July 27, 2023.

P. C. :

1. The challenge in the petition is to the order dated 3rd January 2023 rejecting the petitioner's application filed under order 6 rule 17 of CPC seeking amendment of plaint.

2. Special civil suit no. 1872 of 1997 was instituted by the petitioners for partition, permanent injunction and other consequential reliefs. In this proceedings, partition is sought of number of properties and in respect of one of the properties mentioned at item no.13 at page 37 of the petition, rectification was sought. The first amendment application was filed below exhibit 538

for the purpose of correcting the area of the property which was mentioned at serial no.13. The said application was sought to be withdrawn for the purpose of filing a fresh application which came to be allowed by the trial court vide order dated 17th November 2022. On 2nd December 2023, the fresh application for amendment was filed seeking to correct the area of property mentioned at serial no.13 of Annexure-H to 3800 sqft. The said application came to be rejected by the impugned order on the ground that the plaintiff had failed to show his due diligence by present application.

3. Learned counsel appearing for the petitioner submits that the solitary ground on which the application for amendment is rejected is that the plaintiff has failed to show due diligence. He would further submit that the proviso to order 6 rule 17 of CPC will come into play only in event the suit had been filed subsequent to the amendment of CPC of the year 2002. He would contend that admittedly the suit is of the year 1997 and as such the amendment of CPC of 2002 laying fetters on the powers of the court to allow amendment after the trial has commenced will not apply in the present case.

4. *Per Contra* learned counsel appearing for the respondent submits that the intention of petitioner is to prolong the hearing of

the proceedings. He would contend that suit of the year 1997 has not yet attained finality and various applications have been made for amendment.

5. Considered the rival submissions.

6. The factual position is that the suit is of the year 1997 and as such as rightly pointed out by the learned counsel appearing for the petitioner the proviso to order 6 rule 17 of CPC will not be attracted in the present case. The only criteria which will be required to be applied while deciding the application for amendment is whether the said amendment is necessary for the effective adjudication of the controversy in issue.

7. The suit in question is filed for partition and separate possession and the amendment which has been sought is the rectification of area of one of the suit properties. In my view, the rectification of area will not prejudice any of the parties and that the correct description of property is necessary to ensure that effective decree is passed. In a suit for partition, each of the parties will be entitled to a definite share in the property and if the area is incorrectly described, the same will result in prejudice to all the

parties. In that view of the matter, the proposed amendment to the extent of rectification of the area of one of the suit properties is required to be allowed. The impugned order dated 3rd January 2023 rejecting the application for amendment on the ground that no due diligence has been shown by the plaintiff, has failed to take into consideration the above facts. The impugned order is thus unsustainable and is hereby quashed and set aside.

8. As the impugned order is quashed, the application dated 22nd December 2022 stands allowed and the petitioner is permitted to carry out the amendment as mentioned in paragraph 4 of the said application.

9. Writ petition stands disposed of.

[Sharmila U. Deshmukh, J.]