

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4405 OF 2017

Tukaram Trambak Ighe

...Petitioner.

Versus

Suresh Narayan Ighe & Anr.

..Respondents.

Mr. Kayval P. Shah for the petitioner.

Mr. Ashok S. Pandire for respondent no. 1.

Coram : Sharmila U. Deshmukh, J.

Date : July 21, 2023.

P. C. :

1. Heard.

2. The challenge in the petition is to the order dated 12th January 2017 rejecting the petitioner's application for amendment filed below exhibit 49. Learned counsel appearing for the petitioner points out that by the proposed amendment the petitioner sought to correct the description of the properties which were incorrectly described in the written statement and for the purpose of bringing the subsequent developments on record. He would further submit that this is second application. The first application for amendment was disallowed and as against that writ petition No. 6297 of 2016 was

Patil-SR

SACHIN
RAMCHANDRA
PATIL

Digitally signed
by SACHIN
RAMCHANDRA
PATIL
Date:
2023.07.26
11:14:50
+0530

1 of 4

preferred and this court vide order dated 26th July 2016 granted liberty to the petitioner to file a fresh application and as such in view of the liberty granted the second application for amendment was filed. He would further contend that trial court has rejected to consider the application by holding that by the second application the petitioner seeks to bring on record the amendments which were already declined by the order passed on 17th March 2016.

3. Per Contra learned counsel appearing for the respondents supports the impugned order. He would contend that liberty granted by this court was limited to bringing the subsequent developments on record. However the petitioner by the proposed amendment is seeking to go beyond the liberty granted by this court.

4. Considered the submissions.

5. The impugned order discloses that the trial court has rejected the application for amendment as the petitioner sought to amend the written statement to bring on record the details pertaining to old survey numbers of the suit land, Common well, disputed road and consolidation scheme. The trial court held that the prayer in that respect was already rejected by the trial court in the previous round of

litigation and that the High Court in a challenge to the order passed on the first amendment application has permitted the petitioner to file a fresh application only in respect of the subsequent developments. The trial court however has declined to grant permission to amend the written statement by stating that those subsequent events can very well be brought on record by the defendants even in evidence and certified copies of those proceedings can be filed on record.

6. Perusal of the order of this Court dated 26th July 2016 indicates that this court had granted liberty to file a fresh application only for the purpose of bringing the subsequent developments on record. As such the order of the trial Court to the extent of rejecting the application for bringing the other amendments as regards the correction in the description of the suit property cannot be faulted with. However in view of the fact that apart from bringing the subsequent events on record pertaining to the revenue proceedings it would be also imperative to carry out the consequential amendments in the body of written statement, the order of the trial court declining the permission to amend the written statement and permitting the defendants only to place the documents on record needs to be quashed. As the revenue records along with the consequential

amendment are required to be brought on record the impugned order dated 12th January 2017 is partly quashed to the extent of not permitting the amendment of the written statement for bringing the subsequent events on record. The petitioner is permitted to amend the written statement to bring the subsequent events pertaining to the revenue proceedings on record and to carry out necessary consequential amendments in the written statement.

7. Writ petition is partly allowed.

[Sharmila U. Deshmukh, J.]