

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3745 OF 2016

Sayyad Mohammed Hanif Abdul Kadar
& Ors.

..... Petitioners

Vs.

Shankar Blakrushna Matale (Decd) through
LRS. and Ors.

..... Respondents

Mr. Girish R. Agrawal for the Petitioners.

Mr. R. D. Soni a/w. Mr. V. R. Kasle i/b Ram & Co for Respondent
Nos.1 to 6 & 14 and 15.

Mr. Sachin Gite for Respondent Nos.7 to 9 and 11 to 13.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 30th JUNE 2023.

P. C.

1. The challenge in the petition is to the order dated 19/12/2015 dismissing the petitioner's application under Order 6 Rule 17 of C.P.C. for amendment of the plaint.

2. The facts of the case are that R. C. S. No.143/2002 was instituted by the petitioners for partition, declaration and possession in respect of the suit properties. The suit properties are described in paragraph No.2A of the plaint and are 86 in number. It is not disputed that the issues are framed and the matter is fixed for cross examination of the plaintiff. On 8/1/2014

application for amendment came to be filed by the petitioners. By the proposed amendment, the petitioners sought to correct the description of the properties listed at Item No.41 of the list of properties from 297/1-B ad-measuring 4500 sq. mtrs. to 297/1-A ad-measuring 4771.50 sq. mtrs. This application was opposed by respondent Nos.1 to 6 and respondent Nos. 7 to 9 and 11 to 13 on the ground that there was delay in carrying out the amendment and being post trial amendment proviso to Order 6 Rule 17 of C.P.C. comes into play. The trial Court rejected the application by holding that the proposed amendment sought, cannot be said to be a typographical error.

3. Heard Mr. Girish R. Agrawal for the Petitioners, Mr. R. D. Soni for Respondent Nos.1 to 6 & 14 and 15 and Mr. Sachin Gite for Respondent Nos.7 to 9 and 11 to 13.

4. Learned counsel for the petitioners submit that the proposed amendment is necessary for deciding the controversy in issue and is a mere typographical error, which if allowed to remain, would result in adjudication in respect of completely different property. He would further submit that the same does

not change the nature of the proceedings or seek to introduce any fresh cause of action.

5. *Per contra* learned counsel for respondents vehemently opposed the application. Mr. Soni learned counsel for respondents submits that it is the 5th amendment being carried out and the suit being of 2002 is unnecessarily delayed. He would further submit that proviso to Order 6 Rule 17 specifically restricts the power of the Court to allow post trial amendment unless it is shown that in spite of due diligence the matter could not have been raised by the petitioner before the trial. He pointed out paragraph No.3 of the plaint, where it is stated about the Sale Deed in respect of Plot No.297 and urged that in 1967 the property was sold to respondent Nos.1 to 6 and the petitioner was aware of the same. He would further submit that respondent Nos.1 to 6 are subsequent purchasers and by way of amendment the petitioner-original plaintiff kept on adding subsequent purchasers resulting in delay of the proceedings. He would further submit that pendency of the proceedings raises a cloud over the title of respondent Nos. 1 to 6 acquired in the year 1967.

6. Considered the submission of the parties.

7. It is not disputed that the amendment is post trial amendment and as such the proviso to Order 6 Rule 17 applies with all force. However, fact remains that by the proposed amendment the petitioners seek to correct the typographical error so as to correct the description of the property from 297/1-B ad-measuring 4500 sq. mtrs. to 297/1-A ad-measuring 4771.50 sq. mtrs. There are necessary pleadings to that effect that the plot No.297/1-A was sold in the year 1967, and the same finds place in paragraph No.3 of the plaint, which is at page 24 of the petition. If that is so, it is evident that what was sought by the proposed amendment was only correction of typographical error. In my opinion rejecting of the proposed application will lead to adjudication as regards plot No.297/1-B in respect of which no relief is claimed and of which petitioner does not seek any title. Although proviso to Order 6 Rule 17 lays fetters on power of the Court to allow post trial amendment, in this particular case what the petitioner seeks is only correction of typographical error without any change in the nature of the suit or introducing any fresh cause of action. The pleading to that effect already forming part of the plaint, in my opinion, for effective adjudication as to correct property, proposed amendment is required to be allowed.

8. In light of above, the impugned order dated 19/12/2015 is hereby quashed and set aside. Application "Exhibit 351" in RCS No.143/2002 for amendment stands allowed. Since this Suit is of the year 2002 and have been already delayed for 20 years and is still at the stage of evidence, the trial Court is requested to decide it expeditiously and in any event within a period of one year. Learned counsel appearing for the parties assure to co-operate with the trial Court for expeditious disposal of the proceedings.

9. The writ petition stands allowed in the above terms.

SHARMILA U. DESHMUKH, J.