

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11533 OF 2022

Vasi Ahamed Mohammed Jabbar Shaikh And ...Petitioners
Anr.

Versus

Yasin Mahamudmiya Patel And Ors. ...Respondents

Mr. V. V. Tapkir, for Petitioners.

Mr. V. N. Walawalkar, for Respondents.

CORAM : M.M. SATHAYE, J.

DATED : 3rd March 2023

P.C. :

1. This Petition is filed by Original Defendant Nos. 1 and 2, challenging the Order dated 5th March, 2020 passed below Exhibit 54 in Regular Civil Suit No. 73 of 2013, under which 2nd Civil Judge Senior Judge, Panvel has allowed the amendment Application moved by the Respondent Nos. 1 and 2 (Plaintiffs). By this application Plaintiffs sought to amend and add details of Village, Taluka and District of Suit property Survey No. 16/1-A, which according to them, remained to be incorporated inadvertently.

2. Learned Counsel for the Petitioner submitted that the stage at which the application for amendment was moved and order was sought, was after the evidence was over and the matter was posted for final hearing. It is submitted that under

amended provisions of Order-6 Rule-17 of the Code of Civil Procedure, 1908 and more particularly, proviso thereto, the amendment could not have been allowed after the trial has commenced.

3. Perused the record filed along with the Petition. Paragraph 2 of the plaint shows that the plaintiff has described suit property No. 16/1A along with the detailed boundaries and reference to District Raigad. Present Petitioners (Defendant Nos 1 and 2) has filed Written Statement and in paragraph 2 thereof, the Petitioners have stated that as per the available 7/12 extracts, the suit property is survey No. 16 Hissa No. 1-A is situated at Mauje. Rohinjan Tal. Panvel Dist. Raigad. Complete reading of the written statement clearly shows that Defendant Nos. 1 and 2 (Present Petitioners) clearly understood as to where the suit property is situated including the necessary details.

4. It is true that the impugned order is passed after the issues are framed and evidence is concluded. However, from the pleadings and oral evidence including cross-examination of the parties it clearly emerges that the present Petitioners, having understood location of the suit property, have defended the Suit.

Perusal of the impugned Order shows that learned Trial Judge has considered that only the name of the Village was not included in the description of the suit property by inadvertence and therefore, the learned Trial Judge has allowed amendment as it is technical in nature and does not change the nature of the Suit.

5. In the opinion of this Court, even if the Respondent Nos. 1 and 2 are permitted to add the name of the Village in the description of the Suit property, at the stage when it is allowed to be pleaded, will not result in any prejudice to the present Petitioners since, as already observed above, parties have clearly understood lis existing between the parties including location of the Suit property and the Suit has been defended accordingly. Therefore, for passing effective decree, it is necessary to let complete description of the suit property come on record.

6. In that view of the matter, the impugned Order does not suffer from any patent illegality or perversity and no interference is called for. Petition is accordingly dismissed. No order as to cost.

(M.M. SATHAYE, J.)