



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13306 OF 2018

Balu Ganpati Powar through its POAH and
Anr.

...Petitioners

Versus

Santosh @ Kishor Balu Powar & Ors.

...Respondents

Mr. Akshay Kulkarni for the Petitioners.

Mr. Rushikesh A. Mohite for Respondents.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : AUGUST 8, 2023

P. C. :

1. Heard.

2. The challenge in this petition is to the order dated 21/7/2018 rejecting the petitioner's application for amendment of the plaint under Order 6 Rule 17 of the CPC. Regular Civil Suit No.492 of 2013 was instituted seeking partition of the property which was described in paragraph No.1 of the plaint. Subsequently, after the written statement was filed by the defendant, additional written statement came to be filed by defendants in which it was stated that the boundaries which are

described in the plaint are incorrect and correct boundaries were stated. In the additional written statement contention was also raised as regards previous transactions of the year 1990 in Regular Civil Suit No.107/1991. Application for amendment in the plaint was filed by the petitioners which came to be rejected by the impugned order giving rise to the present petition.

3. Learned counsel appearing for the petitioners submits that by way of 4th amendment, the petitioner sought to incorporate pleadings as regards Regular Civil Suit No.107/1991 which was mentioned in the additional written statement filed by the defendant. He would further contend that typographical error in mentioning of the boundaries was also sought to be corrected in accordance with the boundaries which were stated in additional written statement.

4. *Per contra*, learned counsel for the respondent submits that by the proposed amendment the entire nature of the suit properties will be changed by changing the boundaries. He would further contend that it is post trial amendment and as such not to be allowed.

5. Considered the submissions.

6. The suit has been instituted seeking partition of the property which has been described in paragraph No.1 of the plaint. There is no dispute as regards area of the property. The dispute appears to be as regards the discrepancy in the boundaries which are described in the plaint and the boundaries mentioned in the additional written statement. In the additional written statement the correct boundary of northern eastern and western side has been stated pursuant to which present application has been filed. In my view, considering that it is suit for partition, it is necessary that there is correct description of the property which will be the subject matter of the partition. If the boundaries are not permitted to be corrected there might be a decree in respect of different property.

7. For effective adjudication of the controversy in issue, the amendment as regards correction of the boundary ought to be allowed. It is specific assertion of learned counsel for the petitioner that the same is typographical error inasmuch as road is shown on the eastern side whereas the same is on the northern side and the property of Mr. Bapu Powar is on the southern side but the same is shown on the Eastern side and property of Mr. Ganpati Powar is shown on the southern side and the same is on the western side.

8. In my view the correction of the boundaries will not amount to changing the nature of the suit and for correct identification of the subject matter, amendment as sought is required to be allowed. As regards incorporation of the pleadings in respect of Regular Civil Suit No.107/1991 is concerned, additional written statement was filed by defendant on 17/3/2018 and the application for amendment has been filed on 18/6/2018. In the meantime, affidavit of evidence has been filed and as such amendment is post trial amendment. The application for amendment does not satisfy the test of due diligence and proviso to Order 6 Rule 17 of the CPC lays fetters on the powers of the Court to allow post trial amendment unless the party establishes that in spite of due diligence, the matter could not have been raised before the trial has commenced. In the present case additional written statement was filed on 17/3/2018 and proposed amendment as regards incorporation of pleadings in respect of Regular Civil Suit No.107/2011 was not incorporated. In view thereof, the amendment only in respect of correction of the boundaries can be permitted as the same is typographical error and nothing more.

9. In light of above discussion, the impugned order is modified and amendment only for the purpose of correcting typographical error in

the boundary is permitted. The writ petition is partly allowed as per paragraph No.6 of the application for amendment dated 18/6/2020.

(SHARMILA U. DESHMUKH, J.)