

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

WRIT PETITION NO.2579 OF 2020

Motibai Kachet Thakur (since deceased)
through legal heirs
Vilas Kacher Thakur & Ors. Petitioners

versus

Laxman Hashya Thakur & Ors. Respondents

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- Mr. Rohan Kaiche a/w Mr. Sachin Ramrao Pawar, Advocate for Petitioner.

CORAM : SARANG V. KOTWAL, J.
DATE : 17th APRIL 2023

P.C. :

1. Heard Mr. Rohan Kaiche, learned counsel for the Petitioners.

2. The Petitioners have challenged the order dated 27/03/2019 passed below Ex.10 in Regular Civil Appeal No.157 of 2015 passed by Ad-Hoc District Judge-4, Thane. The Petitioners and their predecessors have filed Regular Civil Suit No.106 of 2011 before the 2nd Joint Civil Judge, Senior Division,

Thane on 14/02/2011 for partition of the properties which are described in paragraph No.1 of the plaint annexed at Ex.B to this Petition. The said suit was dismissed vide Judgment and Decree dated 29/11/2014 by the learned Trial Judge. That order was challenged before the District Court at Thane, vide Regular Civil Appeal No.157/2015. In that Appeal, an application was made under Order VI Rule 17 by the Plaintiffs.

3. The amendment was sought as follows ;

For inclusion of the survey No.113/2020 at Ovla, Survey No.29/3 at Ovla. In both these lands, the area was sought to be amended.

4. The Petitioners wanted to include the survey No.41/1 at Mogharpada in the list of properties and also wanted to correct the survey No.131/1 at Ovla as it was sub-divided as 131/1/A and 131/1/B. This amendment application was rejected by the Ad-Hoc District Judge-4, Thane, vide his impugned order dated 27/03/2019.

5. Learned counsel for the Petitioners submitted that it is necessary to amend the plaint so that correct description of all the properties would be included and no prejudice would be caused to the Original Defendants.

6. I have considered these submissions and I have also perused impugned order. In the said order, learned Appellate Judge has held that the Petitioners had not produced any record or document to show that any property bearing Survey No.41/1 is in existence. He has not produced any record to show that the survey No.131/1 is sub-divided into two parts and no documents are produced to show that area of the survey No.113/20 and 129/3 is wrongly mentioned. On this basis, the application was rejected.

7. I have perused that original application. In that application itself there are some incorrect statements. In paragraph No.3 it is mentioned that survey No.113/20 at Ovla was not mentioned in the suit. This fact is not correct. The said

survey No. is already mentioned in the plaint. In the said application it is further mentioned that survey No.29/3 at Ovla is already mentioned in the plaint. However, no such survey is mentioned in the plaint. The actual survey No. is 129/3, is mentioned in the plaint. Thus even the amendment application is not made with correct description of the properties.

8. Learned counsel for the Petitioners could not point out as to why all these amendments were not made at least during pendency of the suit itself. The suit was filed in the year 2011. After much delay for the first time, in the Appeal, this amendment to the plaint is sought to be made. There is nothing to show that that Petitioners acted with due diligence. Even the amendment sought are not properly described. Learned Judge has given sufficient reasons for rejecting the application. I do not see any reason to take a different view. Consequently, the Petition is dismissed.

(SARANG V. KOTWAL, J.)