



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7505 OF 2024

Kaduba Shamrao Wagh

VERSUS

Kaduba Ramrao Gayke And Another

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Mr. U. S. Patil, Advocate for the Petitioner

Mr. P. B. Salunke, Advocate for Respondent No. 2

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CORAM : R.M. JOSHI, J

DATE : JULY 22, 2024

PER COURT :

1. By consent of both sides, heard finally at admission stage.

2. By this Petition Original Defendant in RCS No. 47/2018 takes exception to the order passed below Exh. 60 rejecting application for amendment to the written statement.

3. Plaintiff filed suit for alleged encroachment done by the Defendants in his properties and for removal of the same with mense profits. Defendants filed written statement and contended that the land Gut No. 403 belonging to the Defendants which is previously known as Survey No. 284. In the written statement there is no reference made with regard to the sub-division of

the said land made in pursuant to implementation of consolidation scheme. It is claimed by the Defendants that later on it was revealed to him that in the written statement instead of survey no. 284/2, survey no. 284 came to be mentioned. Hence, an application was moved for amendment to the written statement.

4. The Respondents/Original Plaintiffs opposed the said amendment on the ground that application has been filed at belated stage that is almost after completion of evidence. It is also contended by the Plaintiffs that by moving said application Defendants is seeking to withdraw admission given in the written statement.

5. Learned Counsel for the Petitioner submits that there is documentary evidence permitted to be filed on record by the Trial Court indicating Defendants being owner and in possession of Survey No. 284/2 as said property came to his share amounting 2 Acre 32R. It is his submission that since it is apparent from this document the mention in the written statement of Survey No. 284 instead of 284/2 deserves to be corrected.

6. Learned Counsel for Respondents/Plaintiffs opposed the said submissions by placing reliance on the judgment in case of LIC of India vs. Sanjeev Builders Private Limited and Anr, 2023 (2) ALL MR 333 (S.C.) to canvass that if amendment changes the nature of suit and the prayer is not bona fide and by such amendment other side losses valid defence, such amendment cannot be permitted. It is his submission that in the event it is accepted by the Defendants that he is owner of Survey No. 284 admeasuring 3 acres and now that he claims to be owners of land admeasuring 2 acres 32R. Thus, according to him, this amounts to change in the withdrawal of admission and change in the nature of suit.

7. It is pertinent to note that the principles applicable for amendment to the plaint and written statement materially differs. As far as change in a nature of suit is concerned, the same cannot be made by Defendants by filing written statement. No doubt, after the commencement of trial, due diligence needs to be shown by the party for seeking amendment to the pleadings. In the instant case, learned Trial Court has

permitted the Defendants to place on record document. These documents on the face of it indicate that there is possibility of mistake being committed in mentioning Survey No. 284 instead of 284/2. Similarly, the area which is now sought to be claimed by the Defendant gets *prima facie* support from the document on record. Thus, in the case like this, the Trial Court was not justified in rejecting application for amendment of the written statement. In any case, Plaintiffs could be given opportunity to lead evidence or to cross-examine Defendant or his witness on the basis of amended pleadings and as such, no prejudice will cause to the Plaintiff by permitting amendment.

8. Since the amendment application is filed at belated stage, some inconvenience is certainly caused to the Plaintiffs and hence, the application Exh. 60 stands allowed subject to cost of Rs. 10,000/- payable by the Defendant to Plaintiffs.

9. Petition stands allowed in above terms.

(R. M. JOSHI, J.)

Malani