



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 1667 OF 2024

Krishna Shivshankar Mandge Through Poa Shivshankar Dagdappa
Mandge

VERSUS

Rahibai Dashrath Shinde And Others

Mr. M. U. Shelke, Advocate for petitioner

Mr. P. D. Dadpe, Advocate for respondent Nos. 1 & 2

Mr. S. B. Choudhari, Advocate for respondent No. 3.

CORAM : R. M. JOSHI, J.

DATE : 03rd January, 2025

PER COURT :-

1. Petitioner plaintiff in RCS No. 70/2023 being aggrieved by rejection of application filed below Exhibit 33 Rule VI of C.P.C. has preferred this petition.

2. Petitioner-plaintiff filed suit against the defendant for seeking injunction from causing obstruction into the peaceful possession of the plaintiff was the suit land Gut No. 101 northern middle side admeasuring 00 Hector 77R situated at village Samudrawani, Tq & Dist. Osmanabad. The pleadings in the plaint indicate that it is came to be mention in paragraph 2 of the plaint that suit property was purchased from Mumtaj Sadul Attar vide registered Sale Deed No. 5474/2016 dated 04.11.2016. Since the plaintiff realized that it was a mistake in the plaint application

to state name of Mumtaj instead the name of the Vendor i.e., Sunil Revanappa Mandge, application Exhibit 33 came to be filed for the correction of the said mistake. This application is rejected by the learned trial Court with observation that there is a possibility of change in the nature of suit.

3. Learned counsel for the petitioner-plaintiff submits that the trial Court has committed error in not considering the stage of the proceeding and he placed reliance upon the judgment of Hon'ble Supreme Court in case of **J. Samuel and others Vs. Gattu Mahesh and others (2012) 2 SCC** which did not apply to the facts of the present case. It is his submission that since there is registered sale deed and which discloses the name of correct name of the vendor, the application ought to have been allowed.

4. Learned counsel for the contesting respondents opposes the petition on the ground by which placing reliance on the judgment of Hon'ble Supreme Court **J. Samuel and others Vs. Gattu Mahesh and others (2012) 2 SCC.**

5. Perusal of the record indicates that the suit is filed for seeking injunction in respect of the property which was purchased by the plaintiff vide Sale Deed No. 5474/2016. The contention of the plaintiff

that instead of mentioning the name of the vendor in the said sale deed, name of Mumtaz Sadul Attar came to be wrongly typed. This gets support from the document i.e., registered sale deed. Thus, there is apparent mistake committed by the plaintiff in mentioning the name of the vendor & permitting such amendment would not change the nature of the suit in any manner.

6. The trial has not commenced and as such, the proviso to order VI Rule 17 would not apply to this Court. In respectful view of this Court, judgment (cited supra) has no application to the present case.

7. Findings recorded by learned trial Court for rejecting the application are perverse. Hence, petition stands allowed. Application Exhibit 33 filed in RCS No. 70/2023 stands allowed. Amendment be carried out within a period of 4 weeks from today before the trial Court.

(R. M. JOSHI, J.)

bsj