



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10061 OF 2018

Satyawan Sarjerao Ukirde

....Petitioner

VERSUS

Deepak Radheshyam Zunzunwala

.....Respondent

.....

Ms. P. V. Langhe, Advocate for the Petitioner.

Mr. L. D. Vakil, Advocate for Respondent No. 1.

CORAM : R. M. JOSHI, J.

DATE : 31st JULY, 2025.

PER COURT :

1. This Petition takes exception to the order passed below Exhibit 34 in Regular Civil Appeal No. 509/2012, filed by Respondent No. 1/original Plaintiff under Order VI Rule 17 of CPC for amendment to the plaint by incorporating the name of the village where the suit property is situated. This Application came to be allowed. Hence, this Petition.

2. Admittedly, the suit is filed by Respondent/Plaintiff for specific performance of the contract in respect of the suit property. The suit is resisted by Defendants on other grounds but it is not

claimed that the Defendants are having any other property available for sale.

3. Trial Court decreed the suit hence Defendants being aggrieved by the said judgment and decree preferred Appeal before District Court, Aurangabad. At the time of final hearing of the Appeal, when objection was raised by learned counsel for Defendants about mistake in the name of village as mentioned in the plaint, Application Exhibit 34 came to be preferred for correction of the same. This Application was resisted by Defendants. Trial Court allowed the said Application by observing that the nature of the suit is not likely to be changed by permitting amendment.

4. Learned counsel for Petitioner submits that at the fag end of the proceedings before the First Appellate Court, amendment ought not to have been allowed unless due diligence was shown. To support her submission, she placed reliance on following judgments :

- (i) Ganpat Bhagoji Kshirsgar & others vs. Anjana Krushna Jamdade & another, 2024 SCC OnLine Bom 3273.
- (ii) Anil s/o Ramsing Bilawar & others vs. Anita w/o Gopal Kadam & another, 2022(7) ALL MR 144

(iii) Ganeshi Rai and another vs. First Additional District Judge, Ghazipur & others, AIR 1992 ALLAHABAD 25.

5. Learned counsel for Respondent No. 1 supported the impugned order by contending that the nature of the suit does not get changed with the amendment and the mistake in the plaint was realised only at the time of final hearing when the same was pointed out by learned counsel for Defendant. It is his contention that during course of entire trial, Defendant never made dispute about identity of the suit property and hence impugned order deserves no interference.

6. Record indicates that with pleadings available on record, suit was tried before the Trial Court. Neither in the written statement nor in evidence any dispute was made in respect of the identity of the suit property or description of village wherein property is situated. As observed by learned Appellate Court that at the time of final argument, the issue is raised about suit property not situated at Karmad. It is thus clear that even the Plaintiff has realised the said mistake at this time that the name of village has been omitted inadvertently in the description of suit property. Immediately after

realisation of the mistake, Application is filed which indicates due diligence.

7. In the facts of the case, the order impugned is not perverse to cause interference therein. No prejudice is likely to be caused to the Defendant on allowing amendment to the plaint.

8. Learned counsel for Petitioner makes a grievance that subsequent Application filed by Appellant/original Defendant has not been decided by the Appellate Court. Learned counsel for Respondent submits that since the present Petition came to be filed and there was stay to the proceedings before the Appellate Court, there was no question of this Application being decided. Without going into the merits of the Application, if such Application is pressed, the Appellate Court is expected to hear the same and pass appropriate order in accordance with law.

9. For the above reasons, the Petition is dismissed.

(R. M. JOSHI)
Judge