



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13332 OF 2021

Sahebrao Ashruba Alias Asaram More
& another

....Petitioners

VERSUS

Sonabai Sheku More & others

.....Respondents

.....

Shaikh Mujtaba Gulam Mustafa, Advocate for the Petitioner

,AGP for Respondents

Agale Attdeep Kacharu, Khot A.d. And Sarwade V.a. For R.no. 2 And
3, R. Nos. 4 And 6 Are Served., Rodge Krishna Pratap For R/4 To 6,
Advocate for Respondents

CORAM : KISHORE C. SANT, J.

DATE : 19th NOVEMBER, 2025.

PER COURT :

1. Heard learned Advocates for the parties.
2. By consent, taken up for final disposal at the stage of admission.
3. Petitioners/original Plaintiffs have approached this Court challenging the order passed by the learned Civil Judge Junior Division, Kannad, dated 06.08.2021 rejecting the Application filed by Petitioners seeking amendment to the plaint.

4. It is the case of the Petitioners that they filed a suit for possession of land to the extent of 12 acres from land Gat No. 65 situated at Dongaon Shivar, Tq. Kannad. It is their claim that the property is tenancy property of their father and the Respondents have forcibly taken possession of the land in collusion with the revenue authorities.

5. An Application came to be filed for appointment of Commissioner in the said suit by the Plaintiffs. Pursuant to the order, the Commissioner filed report along with a map. It is the case of the Petitioners that on submission of Commissioner's report and the map, it is realised that the land is not 12 Acres but 12 Acres and 2 Gunthas. Petitioners, therefore, filed Application seeking amendment in the prayer clause and sought amendment by replacing figure 12 Acres by 12 Acres and 2 Gunthas.

6. The Application came to be opposed heavily by Respondents stating that the Application cannot be allowed since the trial has already commenced and secondly, that the Plaintiffs had knowledge of the facts and still no Application was filed earlier.

7. The learned Trial Judge considered the rival submissions and the application. It is specifically held that there is nothing on record which necessitated the Plaintiffs to file the Application. Secondly, it is observed that no amendment can be permitted after the trial is commenced.

8. It is a matter of record that the affidavit of evidence also came to be filed by the Plaintiffs in the suit and it is only thereafter the Application is made. The suit is of the year 2014. The Application was made at belated stage on 08.02.2021.

9. Learned Advocate Mr. Mustafa vehemently argued that it is only after the measurement, the Plaintiffs realised that actual land in possession of Respondents is more than 12 Acres. Till that time, no exact measurement was on record to know the exact area of the land. He submits that the case is clearly covered by the proviso to Order 6 Rule 17 of the Code of Civil Procedure which permits amendment even after the trial has begun, if case is made out. In the present case, it cannot be said that inspite of due diligence the Plaintiffs could have known exact area of the land. He thus submits

that the Trial Court has committed an error by adopting hyper technical approach.

10. Learned Advocate for the Respondents vehemently opposed the Petition. It is submitted that it cannot be said that the parties do not know the exact area of the land. The amendment Application is clearly hit by Order 6 Rule 17 as the Application is filed after commencement of the trial.

11. This Court has considered the rival submissions. There is no doubt that the evidence has already started. Amendment Application was filed thereafter which is clearly hit by the proviso to Order 6 Rule 17 of Code of Civil Procedure. No case is made out to bring the case under exception as stated in the proviso of the said order. No exceptional circumstances are pointed out. From the prayer clause in the plaint, it is seen that sufficient description of the property is already given. Measurement would hardly affect the case. This Court, therefore, finds that no case is made out calling for interference at the hands of this Court in exercise of powers under Article 227 of the Constitution of India. Writ Petition, therefore,

deserves to be dismissed and the same is accordingly dismissed. No costs.

12. Since the suit is of the year 2014, the learned Trial Judge is requested to dispose of the suit as expeditiously as possible and preferably within a period of one year from today.

(KISHORE C. SANT)
Judge

dyb