

(2009) 02 BOM CK 0106
In the Bombay High Court
Case No : Writ Petition No. 3795 of 2008

Madhav Onkar Mahajan

APPELLANT

Vs

Waman Tukaram Patil and Others

RESPONDENT

Date of Decision : 16-02-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 34, 427, 447

Citation : (2009) 3 CivCC 109 : (2010) 7 RCR(Civil) 2947

Hon'ble Judges : S.B. Deshmukh, J

Bench : Single Bench

Advocate : P.N. Kutti, for the Appellant; Milind Patil, for the Respondent Nos. 1-A to 1-D, Served, for the Respondent Nos. 2 to 6, for the Respondent

Final Decision : Allowed

Judgement

S.B. Deshmukh, J.—Heard respective counsel.

2. Rule. By consent, Rule made returnable forthwith and the petition is taken up for final disposal.

3. This petition takes an exception to the judgment and order passed by the learned Civil Judge J.D., Latur, allowing the application for amendment filed by original plaintiff in Special Civil Suit No.53 of 2006.

4. Learned Counsel for the petitioner - plaintiff submits that the suit is filed by the petitioner against respondents - defendants pertaining to agricultural landed property. Description of the property is given in the suit. The suit was intended to be amended by the plaintiff. Copy of the application is on record, it was filed on 12.07.2007. Amendment sought is in the description of the suit property. In the plaint, description of the suit property, while describing South-West direction number of some other property is given. By the amendment, it has been prayed that instead of South-West, direction should be permitted to be amended as North-West. Except this no other amendment is sought. Date of filing of the suit is not in dispute. Date of granting temporary injunction is not in dispute. Plaintiff,

after grant of temporary injunction filed an application under Order XXXIX, Rule 2A of CPC on 02.05.2008 against defendants and the said application is pending is an admitted fact by the parties. Not only this but according to Learned Counsel Shri Patil for respondents-defendants, criminal case under sections 447, 427 read with 34 of Indian Penal Code is lodged against respondents/defendants by the plaintiff.

5. The learned trial Court rejected the amendment application holding the on account of allowing the application, there would be entire change in the nature of the suit. Learned Counsel for the respondents Shri Patil, raised three fold contention. Firstly, according to him, it appears that the application is innocuous, but it is not so. According to him, this amendment does not help the plaintiff and it would create more problems. He has invited my attention to paragraph No.3 of the plaint. According to him, the plaintiff has filed a criminal case and application under Order XXXIX, Rule 2A of Civil Procedure Code. He also submits that counter-claim is filed by defendants and plaintiff, who was supposed to file written statement in response to that counter-claim, on the same day i.e. on 12.07.2006 filed written to the counter-claim but did not plead therein that he has noticed the wrong description of the property and tried to take steps for correction thereof.

6. Amendments to be considered under Order VI, rule 17 of Civil Procedure Code, CPC has suffered drastic amendments, which have been made enforceable recently i.e. from 01.07.2002. Main objective is to curtail the life of the civil litigation in the civil Courts. With his laudable objective on statute book. This proviso, by this time, has been interpreted by the Supreme Court in the matter of Vidyabai v. Padamlatha, 2009 (1) ACJ 689 (S.C.) : 2009 (1) CCC 798 (S.C.) : 2009(1) Supreme 238. There, the Supreme Court has observed that proviso to Order VI Rule 17 of CPC is mandatory. However, amendment can be allowed only in spite of due diligence the parties could not have raised the matter before the commencement of the trial. It has been further held that the date on which the issues are framed is the date of first hearing. Filing of an affidavit in lieu of examination in chief of the witness would amount to "commencement of proceeding". In the case on head, the amendment sought pertains to the description of the property. Plaintiff seeking amendment as he realised the mistake on the day on which he sat with his Advocate for writing written statement. This explanation tendered by the plaintiff is just and sufficient. It cannot be said that the plaintiff was not diligent while filing the suit itself. On getting the written statement from the defendants as well as receiving the copy of same, it was but natural for the plaintiff to give second thought to the controversial issues in the matter. In my view, the case for amendment is well established within the parameters of Order VI rule 17 of Civil Procedure Code.

The object of the amendment as has been held by the Supreme Court in the matter of L.J.Leach & Company Ltd. v. Messers Jardine Skinner & Company AIR 1957 SC 353 is to resolve the controversy amongst the parties and this has been

consistently followed by the Supreme Court. Even the judgment in the case of Vidyabai (supra) takes care of amended proviso of Order VI Rule 17 of Civil Procedure Code. In my view, order passed by the trial Court is therefore, requires to be quashed and set aside.

7. In the result, Writ Petition is allowed. Impugned order is quashed and set aside. Rule made absolute with no order as to costs. Amendment application is allowed. Amendment to be carried out by the party concerned within four weeks from today. Suit to proceed in accordance with law.