

Order below Exh. 21 in R.C.A. No. 17/2011,

Wasudeo Vs. Gajanan + 1.

(passed on this 24<sup>th</sup> the day of August 2017)

- Dictated in Open Court -

1. By the present application the appellant original defendant prays for amendment of written statement.
  
2. It is the case of appellant that the suit pertains to easementary right and about 2 to 3 months before from point A to N-3, N-2, B-2 Government way is now available by Gram Panchayat, Bordi from eastern side till Makrampur and the road has been laid for going of all vehicles. Hence, prayed for amendment that Gram Panchayat, Bordi has laid down road from Bordi to Makrampur and in use by vehicular traffic. Hence, the contention of plaintiffs that "Shivdand" has turned in to "Nala" nearly from eastern portion of defendant does not remain and hence, plaintiffs have no case to claim easmentary right from the field of defendant as this way is available. That towards western side of field No. 77 there is recorded "Shivdand" from Kasod to Ladegaon and this is used by Malave, Ingle and Hinge for accessing their fields. It is also available to the plaintiffs. It is further contended that the amendment does not change the nature of the suit or take the plaintiffs by surprise.

3. The said application came to be opposed by reply at Exh. 26 wherein it is contended that the appellant wants to prolong the matter and hence, has preferred the present application. The appellant wants to deny pleadings of the plaintiffs, which are from the date of filing of the suit. The amendment will cause prejudice. The suit of plaintiffs is of easementary right over the way described in the plaint and appellant wants retrial of the entire suit. Hence, application be rejected.
4. Heard both sides. It is vehemently contended and the contentions of the application were reiterated. Perused the pleadings of the parties. Considered the submissions. Perused the evidence on record. Following points arise for my consideration and I answer the same as under for the reasons stated hereinafter -

Sr.No.	Points.	Findings.
1.	Whether the amendment is required for adjudication of the present suit ?	In negative.
2.	What order ?	As per final order.

**- R E A S O N S -**

**As to Point No. 1 :**

5. It is necessary to point out that the parties have

accepted the position of the field as pointed out in the Commissioner's map vide Exh. 17. To put it in words, the alleged portion is shown as road till Rajaram Ambalkar's field i.e. point No. "A" in the Commissioner's map. Thereafter there is some dispute as to whether road exists from point "A" to "N". Thereafter, on the southern side of this alleged strip of land "A" – "N" or road there are Gut Nos. 77 and 76. Gut No. 76 belongs to defendant. Gut No. 77 belongs to his relatives. On the southern side of Gut No. 76 there is field of Shri. Tharkar and towards it's southern side is field of Shri. Tade. On southern side of Gut No. 77 there are Gut Nos. 78 and 79. Gut Nos. 78 and 79 are owned by plaintiffs. Towards western side of Gut Nos. 78 and 77 there is Kasod-Ladegaon Nala/road marked by points N, K, K-1, J, K-2. The northern side road leads from Bordi to Makrampur and intersects from the north-west corner of Gut No. 77 at point "N". This factual position is admitted and is also well reflected from the record map available on record.

6. The plaintiffs claim access of road from eastern side of Gut No. 76 from points "A" and "D" and then passing from the southern boundary of Gut No. 76 from points "D" and "C". In the written statement the defendant specifically contends that Bordi to Makrampur portion is road and is "Shivdand" and recorded road. It is further pointed out that it

is denied that there is "Nala" on the said road. It is contended that the cart-way shown in the map alongwith "Shivdand" of village Bordi and Makrampur is available for plaintiffs as of right as way. It is further contended that Ladegaon to Kasod road is also recorded road. Gut No. 77 belongs to family of defendant and thereby taking turn to south from the Bordi-Makrampur road, can straightway approach their field. Other grounds have been also taken, which are not relevant for consideration of this application. Thus, if the pleadings are considered or the defence taken is considered, it is specifically pleaded by the defendant originally that there is already a road in existence from Bordi to Makrampur namely, between points "A" and "N" in the Commissioner's map. Same aspect is tried to be pleaded again by the present application. The only improvement is that the road is laid. By reiterating the said facts, I do not think that there is change in circumstances. Even otherwise if we consider the map, the field of plaintiffs is not appurtenant to Bordi-Makrampur road i.e. between points "A" and "N" in map. The case of the defendant is not that Kasod-Ladegaon "Shivdand"/road/Nala is also converted into a road which is shown by portion N, K, K-1, J, K-2. The field of plaintiffs is appurtenant to this boundary portion. The case of the plaintiffs is apparently access and access from the eastern and southern side of defendant's field from portion A, D and C. Thus, even if the aspect of existence of Bordi-

Makrampur road is accepted or concluded, it would not imply access to the field of the plaintiffs as there is no access to plaintiffs' field directly from Bordi-Makrampur road from portion A and N. Considering all these circumstances, there is no new case made out or there is no change in circumstances except the fact that the allegation of road being laid on the existing access point. Laying or relaying of road will not create a ground for such amendment. Considering the same, the said amendment is misconceived and is not required at all for adjudication of this dispute. The contention of Bordi-Makrampur road in existence is already pleaded originally and evidence has been laid to that effect. Considering this aspect, the application is devoid of merits. Hence, I pass following order -

**- O R D E R -**

1. The application is rejected.

(Anil Subramaniam)

Dtd/- 24.08.2017.

District Judge – 1, Akot, Dist. Akola.

C E R T I F I C A T E

I affirm that the contents of this P.D.F. file are same word for word as per original order.

Name of Stenographer : A.J. Dharamkar.

Court Name : District Judge – 1 and Addl.

Sessions Judge, Akot, Dist. Akola.

Order below Exh. 21.                      6                      R.C.A. No. 17/2011.  
Wasudeo Vs. Gajanan + 1.

Date of order                                :    24.08.2017.

Signed by Presiding

Officer on                                    :    24.08.2017.

Uploaded on                                :    28.08.2017.

relied upon the ruling of Hon'ble High Court of Bombay (Panji Bench) in the case of Zilda Bras De Sa Vs. narayan Kavlekar & Ors. Reported in 2009 (6) ALL MR 663 and the ruling of Hon'ble Supreme Court of India in the case of Shyam Gopal Bindal & Ors. Vs. Land Acquisition Officer & Ors. Reported in 2010 (2) ALL MR 465.

Common order below Exhs. 25, 28 30, 32, 33 in  
R.C.A. No. 17/2011, Wasudeo Vs. Gajanan + 1.  
(passed on this 24<sup>th</sup> the day of August 2017)

- Dictated in Open Court -

1. All these applications pertain to calling of record of documents of existence of Bordi-Makrampur road. These applications are in consequence of and in support of the so called contention of laying of road and hence, amendment as prayed for by application at Exh. 21. For the reasons stated therein, the said application for amendment is rejected. It is hence, clear that the documents sought in pursuance of amendment would also be not relevant for the purpose of the adjudication of dispute between the parties. As pointed out in order below Exh. 21 mere laying of road by putting stones etc. will not create additional circumstance. In view of factual aspect of this case, the law as laid down by the Hon'ble High Court of Bombay (Panji Bench) in the case of *Zilda Bras De Sa Vs. narayan Kavlekar & Ors.* reported in **2009 (6) ALL MR 663** and by Hon'ble Supreme Court of India in the case of *Shyam Gopal Bindal & Ors. Vs. Land Acquisition Officer & Ors.* reported in **2010 (2) ALL MR 465** will not be applicable to the present case. Considering the same, in view of rejection of Exh. 21, the applications are infructuous and do not survive. Hence, I pass following order -

- O R D E R -

1. Applications Exhs. 25, 28 30, 32, 33 are rejected.

(Anil Subramaniam)

Dtd/- 24.08.2017.

District Judge – 1, Akot, Dist. Akola.

Order below Exh. 21.

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