

MHNG180002462013

**ORDER BELOW EXH. 155****TANBA & ORS. .VS. SHOBA & ORS.****(Passed on this 25<sup>th</sup> November, 2021)**

1. Present application is filed by the plaintiffs Under Order 6, Rule 17 r/w. 151 of the Code of Civil Procedure for amendment in the plaint.
2. It is contended in the application that, the plaintiffs have filed present suit for the relief of declaration of ownership and permanent injunction. Recently, plaintiff No. 2 and his Ld. Counsel came across the printing error in the description of suit property. It is further contended that, area of survey No. 290 is 1 H. 10 R. However, it is mentioned as 1 H. 24 R. Area of survey No. 291 is mentioned 1 H. 10 R. instead of 1 H. 36 R. Furthermore, area of survey No. 292, 307 is also wrongly mentioned in the plaint. By this application the plaintiff wants to correct the actual measurement of the suit property. No prejudice would be cause to the defendant, if proposed amendment is allowed.
3. The defendants filed their say overleaf the application. The defendants contended that, present suit is filed in the year 2013. Furthermore, evidence of the plaintiff is already concluded. The plaintiff have not given any proper reason for the delay. Proposed amendment is likely to cause prejudice to the defendants. Hence, defendants lastly prayed to reject the application.
4. Ld. Counsel for the plaintiff Shri V.D. Mule submitted that the proposed amendment is not going to change the nature of suit. No

prejudice would be caused to defendants. Rather, exact description of the property would help to provide further complications. In support of his submission Ld. Counsel relied upon following citations.

. ***Varca Sports Club and Others .Vs. Aires D'costa @ Ayres Genesis Jose Estevam Dacosta and Others, 2021 (4) All MR 471.***

. ***Pinky Devi wd/o. Sunder Singh Thakur and another .Vs. Krishnamurthy Santappa Govilekar, 2013 (3) Mh.L.J.32***

In this case the plaintiff sought only correction in description of suit property by changing the number which has been incorrectly mentioned in the suit. Hon'ble Bombay High Court held that, the amendment sought can not be set to be amendment by which totally new property is sought to be included.

. ***Rajbahaddur Jiyaram Yadav .Vs. Prakash @ Pappu Jiyaram Yadav and Others, 2016 (2) Mh.L.J. 639.***

Facts of the case were that, the original plaintiff filed application for amendment during the stage of final argument. By that amendment, the plaintiff sought to add new property which remain to be added in the suit for partition. Hon'ble Bombay High Court has given useful guidance while dealing with the application for amendment. Hon'ble High Court allowed the application and permitted the party to add new property in the suit.

5. Per contra, Ld. Counsel for the defendant Shri S.M. Pande argued that, the plaintiffs have not shown diligent approach. Furthermore, plaintiff No. 2 is already cross-examined on the point of wrong description of the suit property. Therefore, proposed amendment is likely to cause prejudice to the defendants.

6. Before proceeding further it would be worthwhile to mention brief factual metrics of the case. The plaintiffs have filed present suit for the relief of declaration of ownership and permanent injunction. After filing the written statements, issues have been framed below Exh. 56. It shows that burden of proof is mainly put upon the plaintiffs. Apart from this, the plaintiff have also examined 4 witnesses on their behalf. Present application is filed by the plaintiff in order to correct wrong measurement of the suit properties. Ld. Counsel for the defendants opposed the present application on the ground of delay. I considered submissions advanced by both the Ld. Counsels.

7. Before proceeding further it would be worthwhile to mention relevant legal provision. Order 6, Rule 17 speaks for amendment of pleading. As per this provision discretion is given to the court to allow either party or to amended his pleading for the purpose of determining the real question in controversy. Needless to mention here that, this provision is incorporated in the C.P.C. in order to avoid multiplicity of proceeding.

8. It is well settled principle of law that amendment should not be allowed if it is going to change the nature of suit. So far as this case is concern the plaintiff is willing to amend wrong description of the suit properties that to measurement. Therefore, certainly nature of suit is not going to change at all. Coming towards second objections of the defendants that the proposed amendment is going through cause prejudice to them. Because that wrong description is specifically asked to the witness in his cross-examination. On this point it is necessary to mention here that the defendants have cross examined plaintiffs witness Gendarao below Exh. 57. They have conducted cross-examination in detail manner . Their cross-examination shows that they have specifically asked questions about the wrong description of the suit properties and

witness also have admitted wrong description of the properties. This admission sought by the defendants is the small portion of the cross-examination. Witness has been cross examined in detail manner on other aspect also. Therefore, I am of the considered opinion that proposed amendment would not vanish the total defence of the defendants. Apart from this I would like to mention here that, the proposed amendment is not related about the insertion of new property or correction of survey number. Record shows that, survey numbers are rightly mention in the plaint. It is there measurement which plaintiffs want to correct by this amendment. In the above mention citation at Sr. No. 1 *Varca Sports Club and Others .Vs. Aires D'costa @ Ayres Genesio Jose Estevam Dacosta and Others, 2021 (4) All MR 471*. In this case Hon'ble Bombay High Court Bench at Panji laid down that amendment regarding mis-description of suit property, defective description of suit property can be allowed, if proposed amendment not displacing original cause of action or not brining fundamental change in nature of suit. So far as this case is concern it is not displacing the original cause of action or not bringing fundamental change in nature of suit. Therefore, guidance can be taken from the ratio laid down by the Hon'ble Bombay High Court, Bench at Panji in the above mention citation.

9. Defendants took objection mainly on the ground of delay and lack of explanation of delay. On this point, I am of the considered opinion that, the pain suffered due to the ground of delay can be compensated in terms of money. Proposed amendment is not going to change the nature of suit. Rather, correct description of suit properties would help to further complications, it would help to decide to pass effective decree. Hence, considering the above discussion I pass following order.

...5...

R.C.S. No. 24/2013  
Tanba & Ors Vs. Shobha & Ors.

**ORDER**

1. Application is allowed.
2. Plaintiffs shall carry out necessary amendment in the plain forthwith.
3. Plaintiffs shall pay costs of Rs. 500/- to the defendants.

**Kalmeshwar.**  
**Date 25/11/2021.**

**( H. N. Pole )**  
**Jt.C.J.J.D., Kalmeshwar,**  
**Dist. Nagpur.**

...6...

R.C.S. No. 24/2013  
Tanba & Ors Vs. Shobha & Ors.

**ENDORSEMENT**

Case heard on	:	25.11.2021
Order dictated on	:	25.11.2021
Transcription Ready on	:	25.11.2021
Order checked and signed off	:	25.11.2021

**CERTIFICATE**

I affirm that the contents of the this PDF file order are same word to word, as per the original order.

Name of Stenographer:- R. S. Daware (Gr. III)