

:1:

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 17th OF NOVEMBER, 2022

MISC. PETITION No. 1679 of 2022

BETWEEN:-

VIGYAN SHASTRI S/O SHRI
MADHUSUDHAN SHASTRI, AGED
ABOUT 42 YEARS, OCCUPATION:
BUSINESS 5/5, NEW PALASIA ROAD,
INDORE (MADHYA PRADESH)

.....PETITIONER

(BY SHRI VIKAS RATHI, ADVOCATE)

AND

1. M/S RUSOMA LABORATORIES
REGISTERED COMPANY REGISTERED
OFFICE COMPANY THROUGH
DIRECTOR MAHESH CHANDRA
SHARMA S/O LT. PT. RAMNARAYAN
SHASTRI 5/5, NEW PALASIA ROAD,
INDORE (MADHYA PRADESH)

2. MAHESH CHANDRA SHARMA S/O LT. PT.
RAMNARAYAN SHASTRI, AGED ABOUT
76 YEARS, OCCUPATION: BUSINESS
5/5 NEW PALASIA. ROAD. INDORE
(MADHYA PRADESH)

3. ANANDMOHAN SHARMA S/O LT. PT.
RAMNARAYAN SHASTRI, AGED ABOUT
74 YEARS, OCCUPATION: BUSINESS
5/5 NEW PALASIA. ROAD. INDORE
(MADHYA PRADESH)

4. MADHUSUDHAN SHASTRI S/O LT. PT.
RAMNARAYAN SHASTRI, AGED ABOUT
80 YEARS, OCCUPATION: BUSINESS

:2:

**5/5 NEW PALASIA. ROAD. INDORE
(MADHYA PRADESH)**

**5. SMT. KUSUMLATA VYAS W/O MEGHRAJ
VYAS, AGED ABOUT 82 YEARS,
OCCUPATION: HOUSE WIFE 301,
AWW MARCH APARTMENT NEW PALASIA,
INDORE (MADHYA PRADESH)**

**6. SMT. VANDANA PARIKH W/O SANJAY PARIKH,
AGED ABOUT 59 YEARS, OCCUPATION:
HOUSE WIFE M 113 SAKET
NEW DELHI (DELHI)**

.....RESPONDENTS

**(BY SHRI GHAN SHYAM AGRAWAL, ADVOCATE
FOR RESPONDENTS NO. 1 TO 3)**

.....
This petition coming on for order this day, the court passed the following:

ORDER

01. This petition has been filed by the petitioner under Article 227 of the Constitution of India, against the order dated 29.3.2022 (Annexure P-1) passed in Civil Suit No.1-A/2015 by the Vth Civil Judge, Junior Division, Indore whereby, the application dated 11.3.2022 under Order 6 Rule 17 read with Section 151 of the C.P.C. filed by the petitioner/plaintiff has been rejected on the ground of absence of due diligence shown by the petitioner/plaintiff.

02. The case of the petitioner/plaintiff is that due to typographical error, the it could not mention the proper survey

number of the disputed property as in para 10 of the plaint, it is mentioned as Survey No. 149 instead of Survey Nos.253, 249, 250, 251 and 252, although all the other particulars of the property are identical and there is no change in its description as its boundaries which are also the same as also the area which is 4.09 acres.

03. Counsel for the petitioner has further submitted that, it is true that the petitioner/plaintiff could not file the application under Order 6 Rule 17 of the CPC earlier, but as it is only a clerical error even if the application is filed subsequent to closure of the evidence, on the date of final hearing, the application ought to have been allowed as the petitioner does not intend to lead any further evidence in support of the aforesaid amendment nor any additional document is required to be filed as the pleadings are complete in respect of the property in question and the only difficulty is the description of the Survey numbers which have been wrongly mentioned by the plaintiff in the map which was sought to be rectified by way of the amendment application which has been dismissed as aforesaid

04. In support of his submissions, Shri Akash Rathi, learned counsel for the petitioner has relied upon the decisions rendered by the Supreme Court, High Court of Madras, High Court of Bombay and Calcutta High Court respectively in the cases of *Mount May*

Enterprises vs. Jivratna Medi Treat Private Ltd. reported as (2015) 4 SCC 182: 2015 SCC OnLine SC 84; *Kannayiram vs. Thalaiwar, Thoppampatti Ooratchi Mandram, Morappur Post, Harur Taluk, Dharmapuri District and others* reported as 2016 SCC OnLine Mad 11307: (2016 4 LW 128: (216) 2 MWN (Civil) 346: 2017 AIR CC 965; *Rajashri alias Rajani U. Bhakta & others vs. Maria Elsa De Noronha Wolfango Da Silva since deceased thr. Lrs. Antonio S.C. Pereria and another* reported as 2010 SCC OnLine Bom 178: (2010) 5 Mah LJ 190: (2010) 3 Bom CR 65: (2010) 95 AIC (SUM7) 4 : (2010) 4 AIR Bom R. 406 and *Gopi Nath Dalui vs. Sukumar Bhusan Nandy* reported as 2012 SCC OnLine Cal. 12426: (2013) 1 ICC 374: 2013 AIR CC 1147.

05. On the other hand, the prayer is vehemently opposed by Shri Ghanshyam Agrawal, learned Counsel for the respondent /defendant and it is submitted that the suit itself was filed by the plaintiff/petitioner in the year 2008, and the parties closed their evidence in the year 2022 and in para 10 of the written statement filed in the year 2008 itself, it clearly denies the description of the property, but despite a specific objection being raised by the respondent/defendant, the petitioner did not take any steps to rectify the aforesaid mistake and thereafter, even in the cross-examination of the plaintiff on 09.3.2015, he was also confronted to the averments of the plaintiff/petitioner and misdescription of

:5:

the property in which he has admitted the same, but even thereafter no such application has been filed and at this juncture at the fag end of the trial the application is filed only to further drag the matter.

06. Counsel for the respondent has further submitted that no illegality or jurisdictional error has been committed by the learned Judge of the trial court in coming to the conclusion that there is no due diligence shown by the petitioner in filing the aforesaid application and no reason has been assigned by the petitioner as to why the application has been filed after a period of 14 years. Thus, it is submitted that the petition is liable to be dismissed.

07. In support of his submission, Shri Agrawal, counsel for the respondent has relied on the decisions rendered by the Supreme Court in the cases of *Vidyabai vs. Padmalata* reported as (2009) 2 SCC 409; *Pandit Malhari Mahale vs. Monika Pandit Mahale & others* (Civil Appeal No.189/2020 decided on 10.1.2020) and *Mashyak Grihnirman Sahakari Sanstha Maryadit vs. Usman Habib Dhuka and others* (Civil Appeal No. 3917/2013 decided on 18.4.2013).

08. Heard the counsel for the parties and also perused the record.

09. So far as the Order 6 Rule 17 of the CPC is concerned, the same reads as under :-

:6:

" R.17. **Amendment of pleadings**:- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

(emphasis supplied)

10. On perusal of the aforesaid provision, it clearly reveals that there is no bar in filing the application for amendment at any stage of the proceedings. However, it also provides that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

11. In the light of the aforesaid proviso, it is to be seen that whether the petitioner has shown due diligence in filing the application for amendment and as discussed above, it is not the case that no sooner the petitioner came to know about the alleged typographical error in the plaint, the application for amendment

:7:

was filed.

12. On the contrary, it is apparent that the misdescription of property was taken as a specific plea in the written statement itself, but it appears that neither the plaintiff nor the counsel for the plaintiff have cared to go through the written statement and file the application for amendment in the plaint; despite the fact that in para 10 of the written statement which was filed in the year 2008 itself this fact of misdescription was specifically pleaded by the defendant. Thereafter even in the cross-examination of the plaintiff which took place on 09.3.2015, the plaintiff was also cross examined on the question of misdescription of the property, in 66 of his cross examination but even thereafter no urgency was shown by the plaintiff to amend the plaint rectifying the aforesaid defects and admittedly, the application has been filed only on 11.2.2022 when the matter was fixed for final arguments.

13. Reference in this regard may be had to a decision rendered by the Supreme Court in the case of ***Pandit Malhari Mahale (supra)*** whereby the Court has held as under :-

"Learned counsel for the appellant submits that evidence has already begun and in view of the Order VI Rule 17 of the Code of Civil Procedure, 1908 the amendment could not have been considered unless the Court return a finding that in spite of due diligence, the party could not have raised the matter before the commencement of the trial.

XXXXXXXXXXXXXXXXXXXX

In the present case, the Civil Judge has not returned any finding that the Court is satisfied that in spite of due diligence, the party could not have raised the matter before the commencement of trial. In **Vidyabai & Ors. v. Padmalatha & Anr.**[(2009) 2 SCC 409], this Court observed in para 19 as under :

"19. It is primal duty of the Court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed. However, proviso appended to Order 6 Rule 17 of the Code restricts the power of the court. It puts an embargo on exercise of its jurisdiction. The court's jurisdiction in a case of this nature is limited. Thus, unless the jurisdictional fact, as envisaged therein, is found to be existing, the court will have no jurisdiction at all to allow the amendment of the plaint."

There being no finding by the Court that the Court is satisfied in spite of due diligence, the party could not introduce amendment before commencement of the trial, of the Trial Judge is unsustainable. The High Court has not adverted to the above aspect of the matter. In view of aforesaid, we allow the appeal and set aside the order of the High Court as well as of the Civil Judge, the amendment application stands dismissed."

(emphasis supplied)

14. So far as the decisions cited by the counsel for the petitioner are concerned, the same are distinguishable and are of no help to him.
15. In view of the aforesaid discussion, this Court finds that no

:9:

illegality or jurisdictional error has been committed by the learned Judge of the trial court in rejecting the petitioner's application filed under Order 6 Rule 17 of the C.P.C., as the petitioner has miserably failed to show the due diligence in filling the said application. And, thus, the petition, being devoid of merits, is hereby **dismissed**.

(Subodh Abhyankar)
JUDGE

moni

