

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8151 of 2005
 With
 CIVIL APPLICATION No. 11087 of 2005
 In SPECIAL CIVIL APPLICATION No. 8151 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

=====

- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

=====

MANJULABENJIVABHAISAPARIA - Petitioner(s)

Versus

KUMUDKUMARI JORAVARSING ZALA & 1 - Respondent(s)

=====

Appearance :

MR VIMAL M PATEL for Petitioner(s) : 1,
 MR BM MANGUKIYA for Respondent(s) : 1,
 RULE SERVED for Respondent(s) : 2,

=====

CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 28/10/2005

ORAL JUDGMENT

1.Heard learned advocate for the petitioner Mr.Vimal

Patel and Mr.B.M.Mangukiya for the other side.

2.The present petition is moved against the order granting the amendment under Order 6 Rule 17 of the Civil Procedure Code.

3.The first contention of the petitioner before this Court is that though the respondents were aware as to the change in the plot number of the land in dispute since 19.7.1994, they filed the application for amendment for the purpose on 3.3.2005, i.e., at the belated stage. The suit pending between the parties is of 1987, being Special Civil Suit No.297 of 1987. Earlier, the land in question was known as "land bearing Survey No.90 of village Raiya of Taluka Rajkot." Thereafter, on introduction of the Town Planning Scheme, the land in question was designated as "the land of Plot No.76." At present, none of the parties have mentioned the exact measurement of Plot No.76. It is not a matter of dispute that this very Plot No.76 on finalization of Town Planning Scheme is given Final Plot No.144 on re-arrangement in the scheme introduced for this purpose. The learned lower Court has considered two documents at Marks 70/1 and 70/2. The grievance of Mr.Patel before this Court is that though the scheme of Order 6, Rule 17 provides that a

party may amend the pleadings at any stage of the suit, it does not mean that, at any belated stage, that too after several years and the learned lower Court ought not to have granted such amendment.

4. Second contention raised before this Court is that after the amendment in the relevant Rule 17 which has become effective on 1.7.2002, the learned lower Court ought not to have granted the amendment as prayed for in view of the proviso to the said Rule 17. For the purpose, I would like to re-produce Rule 17 of Order 6 which reads as under.:

"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."

5. It is true that, it is obligatory on the part of the

party praying amendment that even on account of subsequent change also, the amendment if it is required to be made, it should be made prior to commencement of the trial. According to Mr.Patel, on 3.3.2005 when the respondents - plaintiffs prayed for the amendment, the plaintiff - Smt.Kumudkumari Joravarsing Zala was already in the witness box and the lower Court ought not to have granted amendment in the midst of the trial.

6.The third submission is that such amendment would affect the structure of the suit. The facts of the dispute between the parties are in reference to some alleged encroachment on the land in question bearing original Survey No.90, thereafter, designated as Plot No.76 and then, in turn, given Final Plot No.144 as per the allegation made in the plaint.

7.Proviso to Rule 17 is directory and the court, while granting permission to amend the plaint at any convenient stage, can consider the nature of the amendment prayed and its ultimate effect. For the sake of argument, if the Court accepts the contention of the petitioner, then ultimate finding recorded even either in favour of the plaintiffs or against them would get wrong description, because, there is no existence now

of Plot no.76. As per the scheme of the Town Planning Act, the original plot got materially changed or substituted by the final plot. So, the land is rearranged in the final plot that may be given by the statutory authority. At two places the respondents - plaintiffs have simply prayed that words 'in reference to context' be amended accordingly and wherever reference of Plot No.76 is made, it should be corrected and read as 'Final Plot No.144'.

8.The amendment sought for is innocuous. Such amendment, on the contrary, should have invited by the court, so that, identification of the property would become more exact resulting into smooth execution of the decree, if drawn. It cannot be said that by the proposed amendment, structure of the suit would change. It is true that probably the plaintiffs were aware about the change in the number of the plot since 1994, but, ultimately, proviso introduced in the year 2002 and when they stepped into the witness box, the counsel must have realized that to avoid technical complication, let that number of plot be corrected accordingly in the plaint. So, the delay does not go to the root or merits of the application. Merely because, the application could have been preferred earlier and

at appropriate time, would not become itself unsustainable or it deserves rejection, because, the delay in filing such application depends on many aspects.

9. In short, I do not find any merits in this petition and the same is dismissed. Rule discharged.

10. It is made clear that observations made by this Court in the above decision are limited for the purpose of deciding the present petition and it would not come in the way of the rights and contentions of the parties that may be raised before the trial Court.

11. In view of the above finding, no further orders are required to be passed in the Civil Application and it should be treated as disposed of accordingly. The amendment, if not carried out, it should be carried forthwith.

(C.K.BUCH, J)

pathan