

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2651 OF 2014

Kailas Shravan Marathe,
Age: 47 years, Occu. Business,
R/o. Shivaji Chowk, Pachora,
Taluka Pachora, District Jalgaon

...PETITIONER

VERSUS

The Pachora Municipal Council,
Pachora, Taluka Pachora,
District Jalgaon,
Through its Chief Officer

...RESPONDENT

Mr P. S. Shendurnikar, Advocate for petitioner;
Mr D. B. Thoke, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 12th January, 2015

ORDER

By the instant petition, the petitioner/original plaintiff seeks to challenge the order dated 14th December, 2013, passed by Civil Judge Junior Division, Pachora, below Exh.54, in Regular Civil Suit No.38 of 2007, whereby prayer for amendment of plaint has been rejected.

2. The petitioner/plaintiff has instituted Regular Civil Suit No.38 of 2007 against respondent/defendant seeking a decree for perpetual injunction that he be not evicted from the suit property without following due process of law.

3. Mr Shendurnikar, learned Counsel appearing on behalf of the petitioner submits that there is injunction operating in his favour and based on subsequent development, he made application Exh.54 for amendment of the plaint. He further urged that the application for amendment is based on certain admissions given by witness of respondent – Municipal Council in the evidence and also the measurement of road in question carried out by the municipal authorities on or about 14th November, 2013. In addition to above, he submits that it has come on record that there exists another shop, without shifting of which the width of the road cannot be increased and as such, the amendment to the plaint is necessary. According to him, the issues raised in the amendment are based on subsequent development and at first instance, after such development, the petitioner has filed application for amendment of plaint. According to him, since the application for amendment is moved by the plaintiff in his own suit, the defendant will not be put to any prejudice, as the interest of the defendant, i.e. time spent in pursuing the suit can be taken care of properly.

4. Learned Counsel for the petitioner has urged that the issues which were raised in the amendment sought for, are not dealt with by the Trial Court while rejecting the application.

5. While countering the submissions made on behalf of the petitioner, learned Counsel for the respondent - Municipal Council submits that the

learned Trial Court has rightly rejected the application for the reasons stated therein and prays for dismissal of the writ petition.

6. Having perused the reasons furnished by the Trial Court, it is noticed that recording of the evidence is over and the suit is fixed for final arguments. In view of this development, the trial in the suit has already commenced. In that view of the matter, the learned Trial Court has proceeded to reject the application.

7. In the light of above, in my opinion, no illegality is committed by the learned Trial Court while rejecting the application, as the suit is already fixed for final arguments. In that view of the matter, writ petition stands dismissed with no order as to costs.

8. At this stage, learned Counsel appearing on behalf of the petitioner/plaintiff submits that the evidence in support of the amendment in question be permitted to be read at the time of arguments. The prayer stands rejected. However, the petitioner is at liberty to file a fresh suit for agitating the cause as mentioned in the application for amendment.

(N.W. SAMBRE, J.)

amj