

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 7561 OF 2013

1. Sanjay s/o Sakahari Chaudhari
Age: 42 years, Occu : Agril.,
 2. Shobha w/o Sanjay Chaudhari,
Age: 24 years, Occu : Agril.,
 3. Omprakash s/o Sanjay Chaudhari,
Age: 10 years, Occu: Education,
- All R/o Sakuri, Tq. Rahata,
Dist. Ahmednagar. ...Petitioners

versus

1. Bharat s/o Kashinath Rohan,
Age: 60 years, Occu: Agril.,
 2. Bhimraj s/o Bhikaji Chaudhari,
Age: 56 years, Occu: Agril.,
 3. Machhindra S/o Bhikaji Chaudhari,
Age: 54 years, Occu: Agril.,
- All R/o. Sakuri, Tq. Rahata,
Dist. Ahmednagar. ...Respondents

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Mr. V. S. Bedre , Advocate for petitioners.
Mr. Amol S. Gandhi, Advocate for respondent No.1
Mr. U. B. Bilolikar, Advocate for respondent Nos. 2 and 3.
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CORAM : N.W. SAMBRE, J.

DATE : 2ND MARCH, 2015

ORAL ORDER :

. Present petition is by the defendants questioning the
legality and validity of the order passed by learned trial Court on

30/03/2013 below Exhibit-45 an application for amendment of the plaint.

2. Mr. Bedre, learned Counsel for the petitioners-defendants would urge that in the suit after appointment of Court Commissioner in accordance with provisions of Order 26 Rule 9 of Code of Civil Procedure, respondents-plaintiffs have claimed that they have fresh cause for moving an application for amendment of the plaint. According to him, perusal of the report submitted by the Court Commissioner would depict that no such cause could be found out of such report, as in the amendment what is sought, is order for removal of the encroachment by the defendants. In support of his contention, he has taken me through the report/map of the Court Commissioner which is on record at page-30 of the writ petition.

3. He has also taken me through the notings of the Court Commissioner in the said map wherein specific mention is made as regards the land out of Gat No. 291 to the extent of 10 Are is covered with the road.

4. According to him, if the report of the Court Commissioner is accepted as it is, the land which is gone into the road, relief of removal of encroachment cannot be sought against the petitioners-defendants.

5. Per contra, learned Counsel for the plaintiffs-respondents would urge that in the suit, there is a specific claim of injunction that the defendants should not encroach upon the land of the plaintiffs. He would further urge that if it is noticed that the defendants-petitioners have encroached upon the land of plaintiffs, after the measurement of the same, the plaintiffs be given possession of the land encroached. He would further urge that after report of the Court Commissioner, learned trial Court has rightly granted amendment as according to him, the petitioners are not taken by surprise to the said claim sought to be put forth in the amendment.

6. Having considered the rival contentions of the parties and upon perusal of the impugned order, it is noted that learned trial Court has recorded the reasons for grant of amendment. Learned trial Court has in clear terms observed that by grant of amendment, there will be no change in the nature of claim made in the suit. The said reasons, in my opinion, are germane to the cause, as in the plaint itself there is prayer made by respondents-plaintiffs as regards the removal of encroachment.

7. The fact remains that by granting amendment, the

petitioners will not be taken by surprise. In that view of the matter, no interference is called for. The petition is devoid of merits, same fails, stands rejected.

[N.W. SAMBRE, J.]