

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

**WRIT PETITION NO.10492/2014 WITH
CIVIL APPLICATION NO. 14192 OF 2015**

SHIVAJI GOVINDRAO BHOSALE

VERSUS

BHARAT KERBA SHELKE AND OTHERS

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**Advocate for petitioner : Mr.M.D.Gitte
Advocate for Respondents : Kale N.G.**

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**CORAM : N.W.SAMBRE,J.
DATED : 10TH DECEMBER,2015**

ORDER :-

This Petition is filed by the defendant in Regular Civil Suit No.27/2012 which is for removal of encroachment and possession over 29 Aar land out of Survey No.59/2/2. After the trial in the Suit has commenced, the petitioner-defendant filed application for amendment of Written Statement Exh.38, which came to be rejected on 10/11/2014, as such present Petition.

2] Relying upon the respective sale deeds of the parties, the learned counsel for the petitioner-defendant would urge that in between the land of the plaintiff and that of the defendant, there lies Gat No.59/2/1. On East side of which land of the petitioner-defendant's land is located and on the West side, the land of the plaintiff is located. According to him, the correction of the boundary as is sought by way of amendment by deleting the earlier

boundaries, particularly on the western side and by incorporating the correct pleadings will not cause any prejudice to the respondent-plaintiff. He would urge that in view of two sale deeds in favour of the plaintiffs, the confusion arose which has resulted into mentioning incorrect boundaries in the written statement. As an amendment to the written statement is required to be considered liberally he would urge that irrespective of the stage of the Suit, same needs to be granted.

3] Application is opposed by the learned counsel for the respondent plaintiffs on the ground that the encroachment in question is already proved in earlier round of litigation in Regular Civil Suit No.141/12 initiated by the defendant petitioner, which is dismissed on 7/12/2013. According to him, it is not open for the present petitioner-defendant to withdraw the admissions which are given on record, particularly when the evidence of the plaintiff and these witnesses is already recorded. He would then urge that the Petition is liable to be dismissed.

4] Having considered the submissions made, it is required to be noted that the learned trial Court after considering prayer for amendment to the Written Statement has reached to conclusion that the amendment cannot be granted at the stage at which the Suit has reached, as according to the trial Court, the same would amount to creating more confusion in the proceedings which are pending before it, at the behest of the petitioner-defendant.

5] Having considered the rival submissions, it is to be noted that the boundary as mentioned in the Written Statement appears to be the same which was mentioned in the earlier round of litigation by the present defendant in Regular Civil Suit No.141/12.

6] It is open for the petitioner-defendant to take contradictory pleas, however, the stage at which the amendment is sought, i.e. when the trial in the Suit has already reached at advance stage, is required to be taken note of. The petitioner is seeking withdrawal of the pleadings and new additions which in my opinion amounts to withdrawal of the admissions given by the petitioner before the trial Court.

7] In view of above reasons, in my opinion, the conclusion drawn by the learned trial Court appears to be just and proper. Petition as such, fails and dismissed.

8] In view of dismissal of Writ Petition, Civil Application No.14192/15 stands disposed of.

(N.W.SAMBRE,J.)

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