

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

43 WRIT PETITION NO. 7142 OF 2015

**GOVIND LAXMANRAO MORE AND ANOTHER
VERSUS
YOGITA KAPILRAO DESHMUKH**

...

Advocate for Petitioners : Mr. Salunke Sudarshan J

Advocate for Respondent : Mr. V. P. Kadam

CORAM : V. K. JADHAV, J.

DATE : 22nd February, 2016

PER COURT :

1. Heard finally with consent of the parties at admission stage.

2. The petitioners/original defendants are challenging the order dated 23.07.2014 passed by the trial court below Exh. 39 in RCS No. 187/2011 allowing thereby the application filed by the respondent/ plaintiff for carrying out amendment in the pleadings.

3. Brief facts giving rise to the present writ petition are as under:

Respondents/plaintiff instituted the suit bearing RCS No. 187/2011 for the relief of perpetual injunction. The respondent plaintiff has filed application Exh.5 in the

suit for temporary injunction and the same is allowed. Thereafter, during the pendency of the suit, the respondent plaintiff has filed application for appointment of court commissioner as well as application Exh. 39 for carrying out amendment in the pleadings. The learned trial court has allowed Application Exh. 39. Hence this writ petition.

4. Learned counsel for the petitioners submits that the respondent plaintiff instituted the suit for simplicitor perpetual injunction. By way of proposed amendment, the respondent plaintiff is seeking relief of recovery of possession and in that way, nature of the suit is changed. The learned counsel submits that if proposed amendment fundamentally changes the nature and character of the case, then the same is not permissible. The learned counsel, in order to substantiate his contentions, placed reliance on the judgment of the Supreme Court in the case of **Revajeetu Builders & Developers Vs. Narayanswamy & Sons**, reported in **(2009) 10 Supreme Court Cases 84**.

5. The learned counsel for the respondent plaintiff submits that during the pendency of the suit, the petitioners/defendants have encroached upon portion of the suit property. Therefore, the proposed amendment is necessary to avoid multiplicity of litigation. The learned

counsel submits that the proposed amendment would not cause any prejudice to the defendants nor it would change nature of the suit. The learned counsel submits that the trial court has rightly allowed application Exh. 39 and there is no substance in the writ petition.

6. On perusal of the application at Exh. 39, it appears that the respondent plaintiff has filed Application Exh. 39 with an averment that during the pendency of the suit, the defendants have encroached upon 3 feet portion towards southern side of the plot of the respondent plaintiff. I do not think that the proposed amendment would change the nature of the suit. The proposed amendment would not cause any prejudice to the defendants. On the other hand, the proposed amendment is necessary for proper adjudication of the suit. I do not find any fault in the impugned order. The trial court has rightly allowed the application Exh. 39. There is no substance in the writ petition and the same is liable to be dismissed.

7. Hence, the writ petition is dismissed. In the circumstances, there shall be no order as to costs.

(V. K. JADHAV, J.)

JPC