

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

Writ Petition No. 1874 of 2012

* Baburao s/o. Kisan Kshirsagar,
Age 59 years,
Occupation : Agriculture,
R/o. Dhondrai, Taluka Georai,
District Beed. **.. Petitioner.**

Versus

- 1) Dilip s/o. Mahadeo Nagargoje,
Age 39 years,
Occupation: Agriculture,
R/o Dhondrai, Taluka Georai,
District Beed.
- 2) Jaibai Mahadeo Nagargoje,
Age Major,
Occupation: Agriculture,
R/o. As above. **.. Respondents.**

Shri. Prasad Kadam, Advocate, holding for Shri.
Sudarshan J. Salunke, Advocate, for petitioner.

Shri. Amol Joshi, Advocate, holding for Shri. Rajendra
Deshmukh, Advocate, for respondent No.1.

Shri. V.P. Savant, Advocate, for respondent No.2.

CORAM: T.V. NALAWADE, J.

DATE : 25 AUGUST 2016

JUDGMENT:

- 1) Rule. Rule made returnable forthwith. By
consent heard both the sides for final disposal.

2) The petition is filed to challenge the order made by the learned Civil Judge, Junior Division, Georai, District Beed on application filed for amendment of plaint in Regular Civil Suit No.51/2003. This application filed at Exhibit 118 is rejected by the trial Court.

3) The suit was filed against Dilip Nagargoje for relief of removal of encroachment and possession of the encroached portion. The suit was dismissed on merit and in first appeal, the District Court set aside the said decision and remanded the matter. The District Court has allowed the parties to get the land measured to ascertain the extent of encroachment and that order was made on 15-4-2010. The application for amendment came to be made on 31-10-2011 and in that application, the plaintiff, present petitioner contended that only during the measurement it transpired that the owner of land Survey No.475/C Smt. Jaibai Nagargoje is necessary party as this land is adjacent to land Survey No.475/D belonging to the plaintiff. It appears that original defendant is owner on record of Survey No.475/B but between that land and the land of the plaintiff there is land Gat No.475/C. The

plaintiff wants to recover possession from the owner of land Survey No.475/C and the said owner is the mother of the defendant. It is the case of the plaintiff that the defendant and the mother are living in joint Hindu family and they are together in possession of both lands though separate entries are made in the revenue record. As on that record mother of the defendant is shown as the owner, plaintiff sought amendment. In the present proceeding, the map of measurement is on the record to show the location of the land. The 7/12 extract showing that land Survey No.475/C is standing in the name of Jaibai is also produced.

4) The trial Court has rejected the application by holding that initially suit was only against Dilip and there is nothing to show that his mother and defendant were in possession of the adjacent land and so the amendment cannot be allowed.

5) The aforesaid circumstances and the record show that due to misconception, plaintiff had filed the suit only against defendant Dilip and he was presuming the

family of Dilip including his mother, they are being represented by Dilip. The land Survey Nos.475/C and 475/B are adjacent to each other and that can be seen from the map. In view of these circumstances and for getting final adjudication of the disputes between the parties, this Court holds that the trial Court ought to have allowed the amendment. Other things like limitation etc. can be considered after filing of the written statement by the said lady. In view of these circumstances this Court holds that interference is warranted in the order made by the trial Court.

6) In the result, the petition is allowed. The order made by the trial Court on Exhibit 118 is hereby set aside. The application filed for amendment is allowed. After amending the plaint and when defendant No.2, mother of the defendant No.1, is brought on record she will be entitled to file written statement and she is entitled to take all possible defences. Rule is made absolute in those terms.

Sd/-
(T.V. NALAWADE, J.)

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