

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

4 WRIT PETITION NO. 9830 OF 2016

VITHAL GANPAT DUDHAL AND ANOTHER
VERSUS
DROPDABAI YADAVRAO ANTRE AND OTHERS

Shri. D.R. Adhav, Advocate, for petitioners.

Shri. L.B. Palod, Advocate, for respondent Nos.1a to 1d.

CORAM: T.V. NALAWADE, J.

DATE : 5 DECEMBER 2016

ORDER:

1) Notice to the respondents. Learned counsel Shri. L.B. Palod waives notice for legal representatives of respondent No.1. Both the sides are heard.

2) The present petition is filed to challenge the order made on Exhibit 212 from Regular Civil Suit No.127/2005 which is pending in the Court of the Civil Judge Junior Division Shrirampur. The suit is filed by the present petitioners for relief of possession of constructed portion and also open space admeasuring 3 R. The

plaintiffs now want to make amendment in the pleading to make the portion as 2 R in stead of 3 R and they want to add one direction to describe the encroached portion as north east when in the past the property, open space is described as situated on northern side.

3) The suit is for possession of constructed portion and open space admeasuring 3 R and the basis of it is on title. In view of this circumstance, even if the defendants are found in possession of 2 R portion and the plaintiffs are able to prove their title over the portion they will be able to get the decree of possession. In view of this, there is no need to amend the pleadings. The suit is part heard and is posted for final arguments. In view of these circumstances, this Court holds that the proceeding itself is misconceived. In the result, the petition stands dismissed.

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

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