

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

27 WRIT PETITION NO. 471 OF 2015

GAJARABAI GANPAT SHINGADE AND ANOTHER
VERSUS
BIRA BALKU SHINDE, L.RS. SOMA AND OTHERS

Shri. Shoyab Shaikh, Advocate, for petitioners.

Shri. A.S. More, Advocate, for respondents.

CORAM: T.V. NALAWADE, J.

DATE : 3 OCTOBER 2016

ORDER:

1) The petition is filed to challenge the order made on Exhibit 177 in Regular Civil Suit No.8/2007 which is pending in the Court of the Civil Judge, Junior Division, Paranda. Both sides are heard.

2) The aforesaid application was filed for amendment in the plaint and prayer was made to allow the plaintiff to mention the area encroached by the defendant as 1 hectare 15 R in place of area which was mentioned as 2 acres 15 gunthas. Thus, by amendment the area is increased from 95 R to 115 R.

3) The submissions made and the reasoning given show that on the basis of first measurement made by the plaintiff, he had mentioned the area of encroached portion as 2 acres and 15 gunthas. During pendency of the suit, Taluka Inspector of Land Records (T.I.L.R.) was appointed as Court Commissioner. The T.I.L.R. gave report that he noticed that there was encroachment of 1 hectare and 15 R in Survey No.21/C. It appears that after receipt of the report and after giving of the evidence, amendment was sought to mention the portion as 1 hectare and 15 R. Even the Court had framed additional issue by order dated 31-3-2012 and the issue was to the effect that - whether plaintiff proves that the defendants had made encroachment over area of 1 hectare 15 R. Thus, the Court had also formed opinion that the plaintiff was required to show that there was encroachment over 1 hectare 15 R. In view of these circumstances, plaintiff wanted to make amendment to see that he gets area of 1 hectare and 15 R.

4) Learned counsel for the petitioners, original defendants submitted that no due diligence was shown by

the plaintiffs and steps were not immediately taken for making amendment when there was report of the T.I.L.R. There is such circumstance but that will not disentitle the plaintiffs from claiming additional relief in view of the measurements taken by the Court Commissioner. In the application the plaintiffs had contended that during pendency of the suit more encroachment was made and the T.I.L.R. has also noticed the encroached portion as 1 hectare 15 R. Separate cause of action and also additional relief in such a suit is possible if the contention of the defendants is considered from the point of limitation. In view of these circumstances, this Court holds that there are no merits in the present proceeding. The trial Court has taken care of the interest of the defendants by directing the plaintiffs to pay cost of Rs.4000/-. In the result, the petition stands dismissed.

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

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