

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION**

WRIT PETITION NO. 6396 OF 2013

Shri Vilas Nilkanth Patil & Anr.

.... Petitioners

Versus

Shri Bhaskar Bhikaji Pingale & Anr.

.... Respondents

Mr. Sachin Gite for Petitioners.

Mr. R.N.Gite for Respondent Nos.1 & 2.

***CORAM : N. M. Jamdar J.
Thursday 13 October 2016***

ORAL ORDER

. By order dated 22 July 2013 notice for final disposal was issued and the proceedings in Regular Civil Suit No. 526 of 2011 were stayed. Respondents are served. Taken up for final disposal.

2. By the impugned order dated 4 May 2013, the learned Civil Judge Junior Division, Nashik has rejected an application for amendment moved by the petitioners. The petitioners filed a suit against the respondents for declaration and injunction. It was their grievance that they are the owners of the suit property and the

respondents are not recognizing this position and are trying to encroach in the suit property by breaking the compound wall. In this suit, an application for amendment was moved on 6 March 2013 to incorporate averments that on 3 March 2013 in the night the respondents forcibly encroached upon the suit property, removed the compound wall and also the shed and erected the another compound wall and a police complaint was made, but the police authority has not taken any cognizance. The learned Civil Judge while rejecting the application observed that since the trial has proceeded and matter is at the stage of argument, said amendment cannot be permitted and it will change the nature of the suit.

3. Heard learned Counsel for the parties.

4. The learned Counsel for petitioners submitted that what is sought to be brought on record was subsequent events. The learned Counsel for respondents submitted that the impugned order is correct since the amendment will change the nature of the suit and the amendment is barred in view of proviso to Order 6 Rule 17 of the Code of Civil Procedure.

5. Both the grounds given by the learned Civil Judge are not correct. The amendment was sought to be moved on the ground of subsequent events whereby the respondents are alleged to have

encroached upon the suit property during the pending of the suit. At the time of considering the amendment, merits of the amended portion was not to be considered. According to the petitioners, it was a subsequent event. If the view taken by the learned Civil Judge that even in such cases amendment cannot be carried out, will lead to a situation where the respondents will encroach on the suit property with impunity during the pendency of the suit, and then force the plaintiff to file an another suit. This cannot be the intention of the legislature in engrafting the proviso.

6. As far as the change in nature of the suit is concerned, in the plaint itself the injunction and declaration is sought because of the apprehension of the petitioners/plaintiffs that the respondents will encroach on the suit property. By way of amendment, the petitioners have sought to place on record events which according to the petitioners the respondents have proceeded to encroach. Therefore, there is no change in the nature of the suit. As far as the merits of the amended portion are concerned, the respondents will get full opportunity to contest the same.

7. In the circumstances, the impugned order cannot be sustained and is accordingly quashed and set aside. The application filed by the petitioners below Exh. 21 is granted. Amendment to be carried out within a period of six weeks from today. The observations made in this impugned order and this order are prima

facie. It will be open to the respondents to file additional written statement and the learned Civil Judge will consider the amended portion on its own merits.

8. The writ petition is accordingly disposed of in above terms.

(N. M. Jamdar, J.)