

JPP

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

WRIT PETITION NO. 7425 OF 2015

Mr. Raghunath Maruti Raskar.

... Petitioner.

V/s.

Mr. Ganpat Tukaram Shinde.

... Respondent.

Mr. Salil Ray for the Petitioner.

Mr. Ram Apte, Senior Advocate a/w. Sagar Ambedkar for the Respondent.

CORAM : N.M. Jamdar, J.

22 August, 2016.

Oral Order :-

The Petitioner challenges the order passed by the District Judge, Khed-Rajgurunagar, District – Pune below Exhibit 19 dated 30 April 2015 rejecting the application for amendment of the plaint.

2. The Suit was filed by the Petitioner – Plaintiff against the Respondent for possession of an allegedly encroached portion was dismissed and an Appeal was preferred by the Petitioner. In this

Appeal the Petitioner moved an application on the ground that the Respondent has encroached on additional 6 gunthas of land and therefore, plaint needs to be amended. This application was opposed by the Respondent on the ground that the Petitioner has failed to demonstrate that there has been any encroachment at all and the application is without any particulars. The application is rejected by the impugned order.

3. The Petitioner as on date has failed to demonstrate that there is any encroachment in the suit property. There is no question at this stage of amendment of plaint. The Petitioner can, if he so desires, make an application for appointment of a surveyor/court commissioner for measurement. The First Appellate Court can always consider the said application on its own merits. In such survey, if anything in favour of the Petitioner is found, then the Petitioner can move an application for amendment, if so advised.

4. Giving the liberty to the Petitioner as referred above, the Writ Petition is disposed of. All contentions of the parties are kept open.

(N.M. Jamdar, J.)