

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

(1)

WP NO.4521/2017

918 WRIT PETITION NO. 4521 OF 2017

SUNITA ANILRAO DHANDE AND OTHERS
VERSUS
RAJMATI MANIKRAO SAKHARE AND OTHERS

...

Advocate for Petitioners : Mr. Jadhavar Santosh S.

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CORAM : P.R. BORA, J.

Dated: April 05, 2017

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PER COURT :-

1. The order dated 14th of September, 2016 passed by the learned 5th Joint Civil Judge, Junior Division, Beed below the application Exhibit 110 in Regular Civil Suit No. 230 of 2007, is challenged in the present petition.

. The aforesaid application was filed by the present Petitioner who is original plaintiff seeking amendment in the plaint and the same has been rejected by the learned Civil Judge, Junior Division.

2. Shri Jadhavar, learned Counsel appearing for the petitioner, submitted that, without considering the -

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submissions in proper perspective and without considering the material on record, the learned Civil Judge has, on erroneous grounds, rejected the application.

3. I have carefully perused the application at Exh.110 submitted by the petitioner seeking amendment in the plaint and the impugned order passed below the said application. After having perused the other material on record, it does not appear to me that the trial Court has committed any error in rejecting the application filed by the petitioner plaintiff. The learned Civil Judge, while rejecting the application has made the following observations:

"2. The present application has been filed by the plaintiff to carry out the amendment in the plaint. The plaintiff submits that they have filed present suit for removal of encroachment. But, thereafter the Court commissioner was appointed and he has filed his report and map. As per the report and map he has shown the encroachment in property bearing Gat No.283 of 57 R by defendants no.1, 2, 3 and 10 and in property bearing Gat No.288 of 34 R. by defendants no.4 to 9. Therefore, the plaintiffs want to amend the plaint accordingly. They want to change the four boundaries

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in para no.1 of the suit property and also want to change sub para A of para no.1 as 16 R instead of 27 R. In para no.2-B line no.1 and 2, instead of 33 R, they want to mention 41 R and also want to change the four boundaries. They also want to change the four boundaries of Gat No.288 and encroachment as 34 R instead of 4 R and so on. The defendants filed their say and submitted that they have denied the said map prepared by the Court Commissioner. If the proposed amendment is allowed, nature of the suit may change. Hence, application should be rejected.

3. Perused the application in the light of contents of plaint. First of all it is to be noted that this is suit for removal of encroachment and the four boundaries of the suit properties needs to be mentioned properly at the time of institution of itself. Before filing such suit for removal of encroachment, the measurements should be carried out and map clearly showing the alleged encroachment should be filed along with the suit. In the present suit along with the plaint no such map is filed. The present application has been filed after the Court commissioner submitted its report. Such procedure cannot be allowed to change the description of the suit property according to the report submitted by Court commissioner. Apart from that, it can be seen from the bare perusal of the present application for amendment in the plaint that various numerical and Enn number of amendments are sought. The said amendments includes change in the four boundaries of the suit properties, change in the description of the same, change in the area of the same and even the change in the area of alleged encroachment which is to be removed. If all these amendments are allowed, it will be nothing but the new suit property and to try the

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suit afresh. The history of the present case needs to be considered at this stage. This is the case almost ten years old. It is pending for evidence for plaintiff and at this stage such application has been filed. In fact it can be seen that the contents of the present application and the proposed amendments are itself unintelligible one. In such circumstances, I do not find any merit in the present application. Therefore, the application deserves to be rejected. Accordingly, I pass the following order. "

4. As has been observed by the trial Court, when the suit was for removal of encroachment, the onus was on the petitioner plaintiff to give four boundaries of his own land and also to specify the nature and extent of the encroachment allegedly made by the defendant on his property. It is revealed that after Commission report was received, on the basis of the said Commission report, the amendment is sought in the suit plaint. Such course was impermissible and the trial Court has, therefore, rightly declined to accept the request of the petitioner. The trial Court has further observed that after ten years of filing of the suit, the amendment is sought, seeking leave to substitute the boundaries of the suit property. The trial Court did not find it necessary to allow such application.

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5. After having considered the material on record, I do not see any error in the impugned order.

. The Writ Petition, being devoid of any substance, stands rejected.

(P.R. BORA, J.)