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

**WRIT PETITION NO. 8678 OF 2017**

Avantikabai Gambhir Mahajan and Others

PETITIONERS

VERSUS

Ravindra Digambar Mahajan and Others

RESPONDENTS

.....  
Mr. Ajay G. Talhar, Advocate for the petitioners  
Mr. H. F. Pawar, Advocate for respondents  
.....

**[CORAM : SUNIL P. DESHMUKH, J.]**

**DATE : 12<sup>th</sup> JULY, 2017**

**ORDER :**

1. Heard learned advocate for the appearing parties.
2. Trial court has observed in paragraph No. 3 of the impugned order thus -

" 3. After hearing both the sides at length it appears that it is suit for simplicitor injunction and it is binding on part of the plaintiff to prove its case by showing that he is having prima facie case. After perusal of record it appears that plaintiff was aware about the measurement carried out by the defendants, therefore, he cannot seek the relief of declaration in respect of the disputed measurement. Moreover, it is not disputed that some of the facts came to the knowledge of plaintiff after filing of suit which are subsequent development taken place after filing of suit.

*Therefore, it is necessary to carry out proposed amendment to that effect except the prayer of declaration. After perusal of record it appears that some facts can be carried out by the plaintiff upto restricted portion. Therefore, I am of the opinion that this application can be partly allowed. "*

3. As such, it does not appear to be a case that it would be covered by proviso to Order VI, Rule 17 of the Civil Procedure Code, since it is not disputed that developments which have taken place after institution of suit, have been allowed to be brought on record by way of amendment.

4. In view of the same, it appears that there is hardly any error in the order impugned. Writ petition, as such, is not entertained and is rejected.

**[SUNIL P. DESHMUKH, J.]**