

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

WRIT PETITION NO. 573 OF 2016

Kadu s/o. Kisan Gaikwad ..Petitioner

Vs.

Prajesh s/o. Anilkumar Rana
and others ..Respondents

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Mr.A.R.Vaidya, Advocate for petitioner

Mr.P.B.Gapat, AGP for respondent nos.1 to 4

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CORAM : S.V. GANGAPURWALA, J.

DATE : APRIL 24, 2017

PER COURT :

The application for amendment filed by the respondents/plaintiffs is allowed by the trial Court.

2. Mr.Vaidya, learned Counsel for the petitioner/defendant submits that by allowing the amendment application, the description of the property has been changed altogether. The suit property has undergone change. He submits that the right accrued to the petitioner/defendant has

been taken away by virtue of the amendment and such recourse is not permissible. He submits that the amendment sought to be incorporated was well within the knowledge of the plaintiffs. As such, the facts, which were within the knowledge of the plaintiffs at the time of filing of the suit, cannot be allowed to be incorporated by way of amendment. According to the learned Counsel, the learned trial Judge has allowed the amendment application in a casual manner and without considering the efficacy of the amendment.

3. The learned Counsel for the respondents/plaintiffs supports the impugned order.

4. It is trite that the application for amendment has to be liberally construed. By grant of amendment, the area of the suit property or the number thereof is not being changed. The boundaries are sought to be changed. It is settled

proposition that at the time of entertaining the application for amendment, merit of the application need not be considered.

5. The amendment was sought prior to commencement of the trial and therefore proviso to Rule 17 of Order VI the Code of Civil Procedure would not apply. Even otherwise, the petitioner/defendant, by way of additional/amended written statement, can assail the amendment sought to be incorporated. The discretion exercised by the trial Court is plausible.

6. In view of the above, I am not inclined to entertain the Writ Petition. The Writ Petition is disposed of. No costs.

[S.V. GANGAPURWALA, J.]