

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7560 OF 2009

|                             |    |              |
|-----------------------------|----|--------------|
| Bhanudas G. Shete & Another | .. | Petitioners. |
| v/s.                        |    |              |
| Arjun D. Patil & Another    | .. | Respondents. |

Mr. Bhushan Walimbe, for the Petitioners.  
Mr. Umesh Pawar, for the Respondents.

**CORAM: M.S.SANKLECHA, J.**  
**DATE : 13<sup>th</sup> SEPTEMBER, 2017.**

**P.C:-**

This Petition under Article 227 of the Constitution of India, challenges the order dated 9<sup>th</sup> January, 2009 passed by the 4<sup>th</sup> Joint Civil Judge. Junior Division, Islampur. By the impugned order, the Petitioner's (Original Plaintiffs) application for amendment, was rejected. The amendment sought was two fold:-

- (a) That the Original Plaintiffs had partitioned the property and allotted the suit property to his son. Therefore, the amendment seeks to bring son, on record; and
- (b) During the pendency of injunction suit, it is the Petitioner's case that the suit property was encroached upon by the Defendants and, therefore, sought amendment in the prayer clauses, seeking possession on the part of the suit property which has been encroached upon.

2           The impugned order rejected the application on the ground that if the Plaintiffs have parted possession with the property to his son, he has no right to file application and so far as possession of the encroached property is concerned, it is rejected on the ground that this would change the character of the suit.

3           Mr. Pawar, learned Counsel appearing for the Respondents state that in fact, the alleged encroachment on the property had taken place (assuming the allegation is correct), prior to the filing of the suit. Therefore, the statement of the Plaintiffs that the proposed amendment seeks to bring on record the subsequent events, is not correct. This does not appear from the impugned order. However, he states that this objection was taken before the Trial Court and has not been considered.

4           In the above view, both the learned Counsel appearing for the Petitioner as well as the Respondent state that the impugned order be set aside and the matter be restored to the 4<sup>th</sup> Joint Judge, Junior Division, Islampur for a fresh consideration of the amendment application. The amendment application would be considered after taking into consideration the reply originally filed by the Respondents herein, opposing the amendment application and pass a speaking order.

5           Parties are at liberty to make an application before the Trial Court for expeditious disposal of the pending suit, if made, would be considered appropriately. All contentions kept open.

6           **Writ Petition disposed of** in the above terms with order as to costs.

**(M.S.SANKLECHA,J.)**