

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4401 OF 2017

Amitesh R. Patil	..	Petitioner.
v/s.		
Sujata K. Hasbe	..	Respondent.

Mr. Saurabh Oka i/b. Deepali Deherkar, for the Petitioner.
Mr. Gajanan M. Savagave, for the Respondent.

CORAM: M.S.SANKLECHA, J.
DATE : 29th AUGUST, 2017.

P.C:-

Moved for urgent reliefs.

The Petitioner under Article 227 of the Constitution of India, challenges the order dated 17th January, 2017 passed by the Joint Civil Judge, Junior Division, Sanlgi in RCS No.3 of 2012. By the impugned order, Petitioner's application for amendment of his plaint under Order VI Rule 17 of the Code of Civil Procedure, 1908 (Code), was rejected.

2 Mr. Oka, learned Counsel appearing for the Petitioner states that the RCS No.3 of 2012 is before the Trial Court tomorrow. The suit is not being adjourned in view of the fact that Trial Court has been directed by an order dated 28th July, 2016 passed by this Court in Writ Petition No.1105 of 2014 to dispose of the RC Suit No.3 of 2012 expeditiously and preferably within a period of one year from the date of the order. Therefore, the urgency.

3 The learned Counsel appearing for the parties state that the Petition itself could be taken up for final disposal. Therefore, at the request of the parties, the Petition is being disposed of at this stage itself.

4 It is an un-disputed position that application for amendment of the Plaint was made by the Plaintiff at the pre-trial stage. The original suit as filed by the Plaintiffs, was for possession of encroached portion of the property and perpetual mandatory injunction, restraining the Respondent herein (Defendants) from disturbing the possession of the Petitioner herein (Plaintiffs).

5 Mr. Oka, learned Counsel appearing for the Petitioner points out that the amendment application seeks delineate / specify the portion of the property claimed to belong to him which has been encroached by the Respondent herein. The impugned order has disallowed the amendment, holding that it would change nature of the suit. Thereafter, it proceeds to hold that Petitioner would have an opportunity to lead evidence in respect of the area, which according to him, has been encroached upon by the Respondent during the course of the trial. In the above circumstances, it is submitted that on the above basis itself, the amendment should be allowed, as in the absence of pleadings, it would not be able to lead evidence.

6 Mr. Savagave, learned Counsel appearing for the Respondents submit that there is no need to interfere with the impugned order. This amendment is being sought to bring on record the area of 0.03 R which has allegedly been encroached by the Respondent.

7 I find that the suit as filed, was for possession of the

encroached portion of the property and injunction. The amendment only seeks to bring on record the report of the Court Commissioner, that the Respondent herein had encroached upon an area of 0.03 R which allegedly belongs to the Petitioner. This does not change the nature of the suit. The correctness of the claim made in the amendment to the plaint, is subject matter of consideration during trial. In fact, the basis of rejecting the application for amendment that the Petitioner could lead evidence during the trial, would itself establish the necessity of allowing the amendment. This is so as in the absence of appropriate pleadings, the Petitioner herein (Plaintiffs) would have difficulty in leading the evidence. No prejudice is shown to be caused to the Respondent herein (Defendants) by allowing the amendment.

8 In the above view, the impugned order dated 17th January, 2017 is set aside. The Trial Court is directed to allow the Petitioner's application to amend its plaint within such time it deems fit and proceed with suit, thereafter.

9 **Petition is disposed of** in the above terms. No order as to costs.

(M.S.SANKLECHA,J.)