

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5113 OF 2014

Shri.Subhash Mahadev Kanchan ...Petitioner

Versus

Namdev Malhari Kanchan & Anr. ...Respondents

.....
Mr.Madhav J. Jamdar for the Petitioner.
Mr.Nitin P.Deshpande for Respondent No.1.
.....

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JULY 03, 2017**

P.C. :

1. Rule. Rule made returnable forthwith. By consent, petition is heard finally and disposed of at the stage of admission.

2. This petition is directed against the order dated 03.03.2014 passed by the learned 35th Joint Civil Judge, Junior Division, Pune thereby rejecting the application below Exhibit 44 in Regular Civil Suit No. 47 of 2011 filed by the petitioner/plaintiff under Order 6 Rule 17 of Code of Civil Procedure.

3. The petitioner/ plaintiff had filed the Suit against the respondents/defendants. He had sought relief against respondent no.1/defendant no.1, who is a vendor from whom he had purchased 25R land. In the said Suit, the petitioner / plaintiff seeking relief that

respondent no.1/defendant no.1 be directed to carry out the measurement of the suit property and also seeks relief against respondent no.2/ defendant no.2, who had also purchased the land from respondent no.1/defendant no.1 that he should not construct on the adjacent land. The respondents/defendants have filed their written statement. Thereafter, the application for amendment was taken out by the petitioner/ plaintiff mainly on the basis of contentions raised in the written statement and the subsequent development. By way of an amendment, the petitioner/plaintiff wanted to add certain pleadings in respect of sell of 15R land out of 25R land and so also pleaded that respondent no.2/defendant no.2 has started construction after the application below Exhibit 5 for praying interim relief was rejected. He wants relief that there is an encroachment by respondent no.2/defendant no.2 and he should not construct therein.

4. The learned counsel for the petitioner has submitted that this is a subsequent development and it should have been allowed.

5. The learned counsel for the respondent while opposing this petition has supported the order passed by the learned Judge of the trial Court. He has submitted that in the earlier prayer, there was no pleading in respect of encroachment by respondent no.2/defendant no.2. He has further submitted that the petitioner/ plaintiff has

suppressed the fact of selling 15R land out of 25R land, which he had purchased from respondent no.2/defendant no.2. He has further submitted that it will change the nature of the Suit and therefore, it is to be rejected.

6. Perused the prayer, amendment application and the order passed by the trial Court. The petitioner/plaintiff seeking two reliefs that respondent no.1/defendant no.1 be directed to carry out the measurement of the suit property and another relief is against respondent no.2/ defendant no.2, who had also purchased the land from respondent no.1/defendant no.1 that he should not construct on the adjacent land. By way of an amendment, the petitioner/plaintiff has been pleaded that there is a subsequent development. After the rejection of the application of interim relief by the trial Court, respondent no.2/defendant no.2 has started construction and also encroached upon his land. The petitioner/plaintiff also wants to add pleadings in respect of the sell of his land and the measurement.

7. After going through the amendment application, I am of the view that it is not going to change the nature of the Suit and in order to avoid further multiplicity of the litigation, I am inclined to all amendment. I set aside the order dated 03.03.2014 passed by the learned 35th Joint Civil Judge, Junior Division, Pune.

8. Rule made absolute in terms of prayer clause (a) and the amendment is to be carried out within a period of two weeks before the trial Court, subject to payment of the costs of Rs. 5000/-. Parties to appear before the trial Court and co-operate with the trial Court. The respondents/defendants may file their written statement in the trial Court.

9. In view of the above, Writ Petition is disposed of with costs.

10. The trial Court to act upon an authenticated copy of this order.

(MRIDULA BHATKAR, J.)