

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

WRIT PETITION NO.618 OF 2017

Jayendra Chandram Zampale

... Petitioner

Vs.

Mohammad Iliyas A. Raheman Attar & anr.

... Respondents

Mr.S.S. Inamdar for the Petitioner

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: APRIL 24, 2017**

P.C. :

1. Not on Board. Upon mentioning, taken on board.
2. Perused the order dated 28.9.2016 passed by the learned District Judge III, Solapur in Regular Civil Appeal No.209 of 2011 below exhibit 4. In this Writ Petition, the said order rejecting the prayer of amendment of the plaint is challenged. The plaintiff i.e., the present petitioner has filed the suit for simpliciter perpetual injunction in respect of the construction of compound wall. However the compound wall was constructed. So, he amended the plaint and made a prayer for mandatory injunction. The suit was dismissed on 21.8.2010 against which the petitioners have

filed appeal No.209 of 2011 and in between, an application for amendment was preferred.

3. After going through the application for amendment, it appears that the plaintiff wanted to insert the fact of distribution of the suit property which has taken place in 1980-1981 so also the history of further distribution of the suit land and construction of the compound. Thereafter, he wants to plead the ground of his easementary right and thereafter also wants to amend the prayers. On perusal of the impugned order, it appears that the learned Judge has rightly held that the averments in the amendment were within the knowledge of the plaintiff when he filed the suit in the year 208. The suit was decreed in 2010 and thus, it was rightly held that the plaintiff was not diligent in taking timely steps in respect of amendment of the plaint when the suit was pending before the trial Court. The impugned order cannot be faulted with.

4. Hence, the petition is rejected.

(MRIDULA BHATKAR, J.)