

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

WRIT PETITION NO. 4668 OF 2015

RAMKISAN MANIKRAO KHANDARE
VERSUS
KONDIRAM BAPURAM KHANDARE

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Advocate for Petitioners : Mr Gore Ravindra Vitthal

Advocate for Respondents : Mr S B Choudhari

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CORAM : V.K. JADHAV, J.

Dated: January 04, 2018

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PER COURT :-

1. By filing present writ petition, the original defendant has challenged the order passed below exh.35 in RCS No.45/2013.

2. Brief facts, giving rise to the present writ petition are as follows :-

a) Respondent/original plaintiff instituted the suit bearing R.C.S. No.45/2013 for decree of perpetual injunction in respect of the open space admeasuring 840 sq. feet. of his house bearing Grampanchayat house no.351 situated at Mauje Dhanora Tq. Jintur. Respondent/plaintiff has filed an application exh.35

seeking amendment in the plaint. Trial court by impugned order passed below exh.35 allowed said application. Hence, this writ petition.

3. Learned counsel for the petitioner/original defendant submits that, during the pendency of the suit, respondent/plaintiff has filed an application exh.5 for issuance of the order of temporary injunction. However, by order dated 24.9.2013 trial court has rejected said application exh.5 on the ground that extract filed by plaintiff is not supporting his own case. Thereafter, respondent/plaintiff has filed application exh.35 seeking amendment in the plaint. By way of proposed amendment, respondent/plaintiff has included house property bearing grampanchayat house no.351 and also sought amendment in the boundaries of the suit property. Learned counsel submits that, proposed amendment change the nature of the suit and respondent/plaintiff has also filed application exh.35 seeking amendment in the plaint at belated stage.

4. Learned counsel for respondent/original plaintiff submits that, application exh.5 came to be rejected by the trial court mainly on the ground that boundaries shown in the Property extract does not support the case of respondent/plaintiff. Learned counsel submits that, respondent/plaintiff has instituted the suit in respect of the open space of his grampanchayat house no.351 and boundaries as shown in the extract pertains to the entire house property. Learned counsel submits that, respondent/plaintiff has therefore filed an application exh.35 seeking thereby inclusion of the house property bearing grampanchayat no.351 in the suit property and also amendment in the boundaries. Learned counsel submits that, proposed amendment would not change the nature of the suit nor cause any prejudice to the defence of the petitioner/defendant. Learned counsel submits that, though issues are framed, trial of the suit is not commenced in its strict sense. Respondent/plaintiff has not filed his affidavit-of evidence before the trial court.

5. On careful perusal of the application exh.35, it appears that the respondent/plaintiff has included his house property bearing grampanchayat house no.351 in the suit property. Initially, respondent/plaintiff has instituted the suit for decree of perpetual injunction in respect of the open space. Obviously, after the house property is included in the suit property, the boundaries would be changed. Before amendment, towards southern side, house no.351 i.e. house of respondent/plaintiff is shown, however, after amendment, the house of Ramrao Trimbak is required to be shown towards southern side of the suit property. Thus, the amendment as sought is extremely formal in nature. Application exh.5 came to be rejected on the ground that boundaries as shown in the extract does not tally with the boundaries as shown in the suit. However, those boundaries as shown in the extract pertains to the house property and since there is dispute in respect of the open space, respondent/plaintiff has shown boundaries of the open space in the suit before amendment. I do not think that

proposed amendment would change the nature of the suit or it would cause prejudice to the defence of the petitioner/defendant. Moreover, trial is yet not commenced in its strict sense. In view of this, I do not find any fault in the order impugned. There is no substance in the writ petition. Hence, following order.

O R D E R

1. Writ Petition is hereby dismissed.
2. In the circumstances, there shall be no order as to costs.

(V.K. JADHAV, J.)

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