

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

1027 WRIT PETITION NO. 9869 OF 2017

HANMANT BHIMRAO HONRAO
VERSUS
TRIMBAK VISHWANATH MULEY AD ANOTHER

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Advocate for Petitioner : Mr. Shaikh Kayyum Najir
Advocate for Respondent No.1 : Mr. Anil S. Shivpuje.
Advocate for Respondent No.2 : Mr. Vivek J. Dhage.

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CORAM : **V. K. JADHAV, J.**
DATE : 05th January, 2018.

ORDER:

I find no substance in this writ petition. The Petitioner / original Plaintiff has filed an application Exhibit 65 seeking amendment in the pleadings. The Petitioner / Plaintiff has instituted the suit simplicitor for a decree of perpetual injunction. It is the case of the Petitioner / Plaintiff that the Defendants have made encroachment over the suit property. However, inadvertently, the Petitioner / Plaintiff has not prayed for recovery of possession of the encroached portion. The Petitioner / Plaintiff has therefore, filed an application Exhibit 65, which came to be rejected by the Trial Court by impugned order dated 12th June, 2017.

2 The learned counsel for Petitioner / Plaintiff submits that

though the Petitioner / Plaintiff has instituted the suit for a decree of perpetual injunction, inadvertently, the prayer about recovery of encroached portion remained to be incorporated and as such, the Petitioner / Plaintiff has filed an application Exhibit 65. The learned Judge of the Trial Court has erroneously rejected the same.

3 The learned counsel for Respondents / original Defendants submits that both the parties led their oral and documentary evidence in support of their rival contentions and now the suit is posted for final arguments. The learned counsel submits that the Petitioner / Plaintiff has himself pleaded that after the measurement, the Defendants handed over the possession of the encroached portion to the Petitioner / Plaintiff. In view of the same, there is no question of seeking amendment in the plaint and in the prayer clause by incorporating the relief of recovery of possession.

4 On perusal of the plaint, particularly paragraph 4 of the plaint, it appears that the Petitioner / Plaintiff has specifically pleaded that after the measurement carried out by the T.I.L.R. Office, the Defendants admitted the encroachment over the Plaintiff's land and handed over the possession of the encroached portion by fixing the boundaries before the respectable Panchas of village and even the

officials of T.I.L.R. Office, Udgir. It further appears that in paragraph 5 of the plaint, the Petitioner / Plaintiff has pleaded that despite handing over the possession of the encroached portion, the Respondents / Defendants are trying to disturb his possession. In view of the aforesaid pleadings, the Petitioner / Plaintiff has instituted the suit for a decree of perpetual injunction. The Petitioner / Plaintiff has not approached the Court by filing the application Exhibit 65 contending therein that due to subsequent events the Petitioner / Plaintiff has lost the possession over the encroached portion again. In absence of any such averments in the application Exhibit 65, the amendment as sought is uncalled for and without any basis. The learned Judge of the Trial Court has rightly rejected the application. I do not find any fault in the impugned order. Hence, the following order:

ORDER

- I. The writ petition is hereby dismissed. No costs.
- II. In the circumstances, the costs deposited by the Petitioner / Plaintiff before the Trial Court shall be refunded to him.

[V. K. JADHAV, J.]