

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8814 OF 2016

A.H.Osmani,
Age 60 years, Occ. Agriculture
R/o Nemat-Villa, Gawandi Galli,
Near Khadak Hanuman, Latur. ..Petitioner

Versus

1. Ramling Bhimrao Kasbe
Age 55 years, Occ. Service
2. Sow. Minakshi Ramling Kasbe
Age 50 years, Occ. Household
3. Vaibhav Ramling Kasbe,
Age 24 years, Occ. Student

All residents of Lamjana,
Tq. Ausa, Dist. Latur. ..Respondents

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Advocate for Petitioner : Shri Dalal Arun G.
Advocate for Respondents : Shri Dharashive M.L.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: January 08, 2018

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ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.
2. Rule.
3. By consent, Rule is made returnable forthwith and the

petition is taken up for final disposal.

4. The petitioner / plaintiff is aggrieved by the order dated 5.10.2016 passed by the trial Court, by which application Exhibit 118 filed by the plaintiff seeking an amendment to the plaint under Order VI Rule 17 of the CPC has been rejected.

5. I have considered the submissions of the learned Advocates.

6. Learned counsel for the respondents submits that this petition be dismissed with costs since the amendment sought by the plaintiff will change the nature of the suit and would amount to introduction of a new and distinct cause of action. He can prefer a separate suit, if he so desires, subject to the limitation applicable and he cannot be permitted to amend the plaint. He further submits that the proposed amendment is vague and does not deserve to be entertained as it lacks in merits.

7. I find that the suit preferred by the plaintiff was for perpetual injunction. By way of interim injunction, the plaintiff had prayed for certain directions against the defendants. There is no dispute that the application for injunction under Order XXXIX Rule 1 of the CPC was disposed off by directing the parties to maintain status quo and

the Misc. Civil Appeal filed by the plaintiff was also rejected.

8. I find that the petitioner has sought an amendment on the basis of subsequent events / developments that have occurred during the pendency of the suit. After the plaintiff preferred the suit on 4.10.2011, the defendants are said to have indulged in encroachment and have resorted to a construction in October, 2013 and thereafter. On the basis of these allegations, the plaintiff had sought leave to introduce paragraph No.4A and prayer clause 1A by the application Exhibit 118. The amendment sought was with regard to the recovery of the encroached portion and for demolishing the construction erected upon the encroached portion.

9. The issue is as to whether the proposed amendment would drastically change the nature of the cause of action and whether the plaintiff would be prevented by the law of limitation to raise the said issue. It is obvious that the plaintiff could prefer a separate suit for seeking demolition of the construction erected and recovery of the encroached portion. This would require a new suit to be filed. Since by subsequent events, the defendants have raised some construction and have allegedly encroached on the suit land, in a suit seeking injunction, I do not find that the plaintiff should be relegated to the option of filing another suit for demolishing the said construction

against which he has already put forth his prayers in the suit. The application for amendment was filed on 16.2.2016 and therefore, for the delay caused by the petitioner in moving the said application, the defendants can be compensated with costs.

10. This petition is, therefore, partly allowed. The impugned order dated 5.3.2016 is quashed and set aside and application Exhibit 118 is allowed, subject to the following conditions:-

(A) The proposed amendment should be carried out within four weeks from today.

(B) The plaintiff shall deposit an amount of Rs.7,500/- (Rs. Seven Thousand Five Hundred only/-) before the trial Court within four weeks from today and the three defendants appearing in these proceedings shall withdraw the said amount in equal proportion.

(C) The plaintiff shall not seek an extension of time and on failure to comply with either of the above directions, this order would lose its efficacy and the plaintiff would then be precluded from amending his plaint.

(D) Insofar as the cause of action introduced by the plaintiff vide the amendment, is concerned, the trial Court shall deal with the issue of limitation to be reckoned from the date of application Exhibit 118.

11. Rule is made absolute accordingly.

(RAVINDRA V. GHUGE, J.)

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