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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3135 OF 2016

Shrirang Ranku Kamble

..Petitioner.

V/s.

Dhondiram Thalu Kamble & Ors.

..Respondents.

Mr.Sandeep S.Koregave for the petitioner.

Mr.Bhoshan R.Mandlik for respondent No.1.

CORAM: NITIN W.SAMBRE, J.

DATE : JULY 27, 2018

P.C.:-

Heard respective counsel for the parties.

2. Heard the learned counsel for the petitioner.

Considering the advanced stage of the suit, the counsel for the petitioner would urge that though the boundaries of suit property are mentioned in the plaint, what is sought to be inserted by way of amendment is to carry out corrections in the boundaries of the suit properties in the plaint.

3. The learned counsel for the petitioner-plaintiff would rely upon the judgment of this Court in the matter of *Khasagi*

*(Private) Devi Ahilyabai Holkar Charitable Trust, through its trustees and others V/s. Audumbar Gangadhar Nikate and others*¹ so as to claim that in a suit if the witness of the plaintiff is under cross-examination and even if suit has reached at an advanced stage, amendment can be granted by ordering correction in the boundaries.

4. If the judgment cited by the learned counsel for the petitioner is appreciated in the backdrop of the facts of the present case, what is required to be noted is that the plaintiff's cross-examination is almost over whereas in the case cited, the plaintiff's witness has entered in witness box, whose evidence was being recorded. Apart from above, this Court exercising discretion in the case of *Khasagi (Private) Devi Ahilyabai Holkar Charitable Trust, through its trustees and others (cited supra)* is based on the defendants not disputing the boundaries. In the present case, it is during the cross examination of the petitioner by the defendants, such lacuna has been noticed which is sought to be filled-in. As such, the law cited will be of hardly any assistance to the petitioner.

¹ 2016 (1) Bom. C.R. 534

5. The fact remains that the evidence i.e. cross-examination of the plaintiff is going on. Since the suit has reached at an advanced stage, in my opinion, the learned trial Court while rejecting the prayer for amendment has not committed any error of law.

6. In the backdrop of the above, no interference is warranted. The petition is dismissed.

(NITIN W.SAMBRE, J.)