

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

WRIT PETITION NO. 8981 OF 2016

Smt.Laxmibai Dattatray Tembe	...	Petitioner
V/s.		
Ankush Vithal Aghaw	...	Respondent

- Mr.Pramod Pawar i/b. Mr.Sandeep V. Mahadik for Petitioner.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 17th APRIL, 2018.

P.C. :

1] Heard learned counsel for the Petitioner. The Respondent is absent though served with notice.

2] By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioner is challenging the order dated 4th July 2016 passed by the Court of Civil Judge Junior Division, Shahapur, below the application at Exhibit-28 in Regular Civil Suit No.145 of 2012.

3] The application at Exhibit-28 was filed by the present Petitioner, who is the Plaintiff before the Trial Court for seeking amendment in the plaint under Order-6 Rule-17 of the Code of Civil

Procedure, 1908. The Trial Court has, however, rejected the said application. Hence, the instant Writ Petition.

4] Perusal of the application for amendment filed by the Petitioner shows that, the amendment which Petitioner is seeking is only the consequential amendment in view of the measurement of the suit property carried out by the Executive Engineer subsequent to filing of the suit. In the suit Petitioner has claimed the possession of the encroached portion of 5 gunthas; whereas by way of proposed amendment, she is seeking the possession of the area to the extent of 2.63 gunthas, which was shown as the encroached portion in the map drawn by the Executive Engineer.

5] In my considered opinion, such proposed amendment should have been allowed by the Trial Court; especially having regard to the fact of this subsequent development and considering that the trial has yet not commenced.

6] Hence, Writ Petition is allowed. The impugned order passed by the Trial Court is quashed and set-aside.

7] As a result, the application at Exhibit-28 filed by the Petitioner is allowed.

8] The Petitioner to carryout necessary amendment in the
plaint within a period of four weeks from the receipt of this order by
the Trial Court.

[DR.SHALINI PHANSALKAR-JOSHI, J.]