

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

928 WRIT PETITION NO.478 OF 2018

RAMESH NIVRUTTI WAMAN

..PETITIONER

VERSUS

RAOSAHEB JAYRAM DESHMUKH AND ANOTHER..RESPONDENTS

...
Mr. Satyajeet S. Dixit, Advocate for the
Petitioner.

Mr. Vinayak Sudhakar Bedre, Advocate for the
Respondent No.2.

...

CORAM : S. V. GANGAPURWALA, J.

DATED : 03rd JANUARY, 2019.

PER COURT:-

1. Mr. Dixit, learned counsel for the petitioner submits that the plaintiff has filed Suit for possession of the encroached portion and also for measurement. Thereafter, measurement had taken place. Petitioner filed an application for amendment of the plaint, the same is rejected. According to the learned counsel the nature of the Suit would not change. The petitioner is amending the pleadings. The Court on the ground that amendment is in the nature of evidence has rejected the same.

2. Mr. Bedre, learned counsel for respondent submits that the nature of the Suit would change. It is only after the say was filed by the

respondent, the petitioner filed an application for amendment. The amendment is afterthought. The Court has rightly considered the said aspect. The amendment would cause prejudice to the defendant.

3. It is not disputed that the Suit is at the nascent stage. The issues are also not framed. Proviso to Rule 17 of Order VI would not apply.

4. The plaintiff by way of amendment is correcting the description of the property by adding the encroached portion in his pleadings. The defendant will have every opportunity to controvert the averments introduced by way of an amendment. It is for the plaintiff to prove his case as introduced by way of an amendment.

5. Considering the above, the application of the petitioner for amendment deserves to be allowed. However, the petitioner also deserves to be mulct with costs.

6. In the result the impugned order is quashed and set aside. The application filed by the petitioner for amendment that is Exhibit 32 is allowed on condition that the petitioner pays cost of Rs.5000/- to respondent no.2 within a period of four (04) weeks from today. The cost may be directly paid to respondent no.2 or shall be deposited in the Trial Court on or before four weeks.

7. Writ Petition is allowed. No further costs.

(S. V. GANGAPURWALA)
JUDGE

Devendra/January-19