

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

56 WRIT PETITION NO.3727 OF 2019

DIVAKAR HIRAMAN CHAUDHARI AND ANOTHER
VERSUS
SURESH VASANT NEVE (WANI) AND OTHERS

...
Advocate for Petitioners : Shri Praveen B. Gamot
AGP for Respondents – State : Shri S.K.Tambe
...

CORAM : P.R.BORA, J.

DATE: 18th March, 2019

PER COURT:-

1 Heard Shri P.B.Gamot, learned Counsel appearing for the petitioners.

2 The petitioners intend to challenge the order passed below Exh.39 in Regular Civil Suit No.302 of 2014 by the Civil Judge, Senior Division, Bhusawal on 22.11.2018. The aforesaid application was filed by the plaintiffs seeking amendment of plaint by invoking provisions under Order VI Rule 17 of the Civil Procedure Code.

3 The material on record reveals that the Suit is filed by the plaintiffs seeking declaration that the measurement in respect of the suit property carried out on 11.08.2002 shall be held to be

the valid measurement. It is the case of the petitioners that subsequently atleast on three occasions measurements were carried out on 10.11.2010, 17.02.2011 and 02.07.2014 and every time the measurements were on variance. In the circumstances, according to the averments in the plaint, the plaintiffs were constrained to file suit for declaration so as to get declared the correctness of the measurement as are shown in the measurement carried out on 11.08.2002.

4 The application Exh.39 was came to be filed by the petitioners seeking amendment in the plaint, thereby seeking permission to incorporate certain facts to the effect that the defendants have unauthorizedly entered into the field of the plaintiffs and has made encroachment on portion ad-measuring 7 foot x 1200 foot and consequent prayers were sought to be incorporated as about removal of the encroachment. The Trial Court has rejected the said application on the ground that if such amendment is allowed, it may change the nature of the Suit. Apparently, it does not appear to me that the Trial Court has committed any error in rejecting the application.

5 On a query made by this Court whether the encroachment as alleged by way of amendment is done by the defendants prior

to filing of the suit, it is informed that such an encroachment was in existence prior to filing of the suit. The fact which was within the knowledge of the plaintiffs at the time of filing of the suit in the year 2014 and based on the said fact the relief which could have been claimed at the time of filing of the suit itself, cannot be permitted to be incorporated by way of amendment that too after long lapse of four years.

6 In the circumstances, it does not appear to me that any interference is required in the order so passed by the Trial Court. The petition being devoid of merits deserves to be dismissed and is accordingly dismissed.

(P.R.BORA)
JUDGE

SPT