

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

WRIT PETITION NO.5616 OF 2016

KESHAV KONDIBA BHARADE
VERSUS
VILAS YADAVRAO BHARADE AND OTHERS

...

Advocate for the Petitioner : Shri Kalani Pravin N.

Advocate for Respondent 1 : Shri Latange V.P.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 26th February, 2019

Per Court:

1 I have heard the learned Advocates for the respective sides. None has appeared on behalf of Respondent Nos.2 and 3 despite service of court notice.

2 I have considered the impugned order in the light of the request of the Petitioner/ Plaintiff seeking amendment to the plaint. There is no dispute that the suit was filed by the Plaintiff seeking an injunction against the Defendants that they should not commence the construction on the portion mentioned in the suit property. Now it is the case of the Plaintiff that during the pendency of the suit, the Defendants have erected some construction. He sought an amendment to introduce a prayer that the said construction be demolished if the suit is allowed.

3 The Trial Court has considered the application Exhibit 35
filed by the Plaintiff and has rightly concluded that if the prayer for
removal of construction is to be incorporated, the Plaintiff must at least
mention the dimensions of the construction and must at least make an
averment that the said construction is a result of an encroachment. In the
absence of such averment, there would be no purpose in permitting such
amendment as the proposed prayer would be vague and ambiguous and
would lead to further complications if the said prayer is eventually
allowed by the Trial Court.

4 At this juncture, the learned Advocate for the Petitioner
concedes that proper pleadings are not set out in Exhibit 35. He would
prefer a fresh application and put forth all details therein.

5 The learned Advocate for the Respondents submits that all his
objections to the said application may be kept open.

6 In view of the above, this Writ Petition is disposed of.

7 In the event, the Petitioner/ Plaintiff prefers an application
under Order 6 Rule 17 of the Code of Civil Procedure, the Trial Court
would consider the same on its own merits and after considering all
objections of the Defendants.