

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

WRIT PETITION NO. 5193 OF 2019

Yamunabai Gorakh Kale

..PETITIONER

-VERSUS-

Shahaji Rajaram Jadhav
and others

..RESPONDENTS

...

Mr.N.P. Ghanwat, Advocate for petitioner.

...

CORAM: V.L. ACHLIYA, J.

DATE : 30.04.2019

ORAL ORDER:

By way of this Petition filed under Article 227 of the Constitution of India, the petitioner has challenged the order dated 22nd November, 2018 passed vide Exhibit-32 by 4th Joint Civil Judge, Junior Division, Vaijapur in Regular Civil Suit No.374 of 2016. By the impugned order, the application seeking amendment of counter claim moved by defendant no.4 in the suit came to be allowed.

2. In brief, it is the contention of learned counsel for the petitioner that the

amendment sought to be incorporated entirely changes the description of the property in respect of which the counter claim has been made.

3. I have carefully considered the submissions advanced in the light of the reasons recorded by the trial Court. While dealing with the application, the trial Court has considered over all facts of the case and recorded the reasons, which read as under:-

"4. Perused the record and proceeding. Heard, Ld. Advocate of both parties at length. The defendant No.4 filed his counter claim at Exh.15 and thereby claimed perpetual injunction against plaintiff. The suit property in counter claim is 51 R of Gat No.1770 situated at Alapurwadi, Tal.Vaijapur. On perusal of counter claim it reveals that defendant No.4 mentioned certain boundaries of Gat No.1770. Defendant No.4 has filed correction deed along with list Exh.34. On perusal of correction

deed it prima-facie reveals that the defendant No.4 get corrected boundaries of 51 R land of Gat No.1770. Now defendant intended to correct the boundaries of suit land in counter claim as per correction deed. Therefore, proposed amendment seems to be necessary for defendant to prove his case. It also necessary for proper identification of suit property in counter claim. The plaintiff raised objection to present amendment on the ground of wrong boundaries incorporate by defendant. At this juncture it cannot be said that the boundaries intended to be incorporated by amendment are correct or false. It is for the defendant to prove that he has given proper identification suit property. If he fails then naturally he suffer the consequences. It need evidence. Therefore, plaintiff is at liberty to file her additional written statement to amendment.

5. Therefore, proposed amendment seems to be necessary for proper and effective adjudication of counter claim. It will minimize the complication in the trial. If application is rejected then it will cause more hardship to defendant than plaintiff. Therefore, proposed amendment seems to be necessary. It helps to court to determine the real questions in controversy between the parties. It will not change the nature of counter claim."

4. Thus it is apparent from the order passed, the amendment has been allowed in the light of deed of correction executed on 27th February, 2017. It is apparent from the face of record that the hearing of the case is yet to commence. The application is filed after framing of issues and before the evidence adduced in the matter. No serious prejudice will be caused to the plaintiff if the amendment is allowed. Correctness of the boundaries given and identity of the property as well as the other objections, the same can be duly considered while dealing with the

suit on merits.

5. In my view, the order suffers from no illegality so as to call for interference in exercise of writ jurisdiction under Article 227 of the Constitution of India. Accordingly, the Petition is dismissed with no order as to costs.

[V.L. ACHLIYA]
JUDGE

SGA