

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 10848 OF 2019

Pandit s/o Narayan Raut
& others

Petitioners

Versus

Ramesh s/o Piraji Bandewar
& another

Respondents

Mr. S.C. Arora, advocate for the petitioners.

CORAM : RAVINDRA V. GHUGE, J.

DATE : 11th September, 2019

PER COURT:

1. The Petitioners-original defendants in Regular Civil Suit No. 245/2016 are aggrieved by the order dated 10.04.2019, passed by the trial Court, by which application Exhibit 35 preferred by the plaintiff, seeking amendment to the plaint, has been allowed.
2. The learned Advocate for the petitioners has strenuously criticised the impugned order. He relies upon the five grounds formulated in the memo of the petition. It is contended that the suit is purely for injunction and the amendment to the plaint would change the nature of the cause of action. No documents are filed to show the boundaries of the suit land. The measurement report of the Deputy Superintendent of Land Records, dated 28.06.2017, should not have been relied upon by the trial Court.

3. The record as well as the impugned order reveal that temporary injunction was granted in favour of the plaintiff. Thereafter, he had got the land measured through the TILR. Loha. After the measurement of the suit land was carried out on 15.03.2017, the plaintiff noticed that along with the defendants, one Hanumant Munjaji Raut had encroached upon the same portion of the suit land, though temporary injunction was in force.

4. The plaint reveals that the plaintiff desires an injunction against the defendants that they should not disturb his peaceful possession and should not encroach upon his land. During the pendency of the suit and upon such measurement indicating that the defendants *prima facie* have encroached upon the land along with the stranger - Hanumant Munjaji Raut, who is the adjacent land owner, the plaintiff moved the trial Court with Exhibit-35 seeking addition of the prayer. In my view, when the original prayer in the suit is as regards protecting the suit property and seeking injunction against the defendants from encroaching upon the land, a relief of recovery of encroached portion would naturally have to be made in the same suit on the basis of events that have occurred during the pendency of the suit. This would

avoid multiplicity of litigation and it would not alter the cause of action. The purpose, for which the suit was filed, would be frustrated if the subsequent events are not brought on record.

7. This petition, being devoid of merits is, therefore, dismissed.

RAVINDRA V. GHUGE
JUDGE

dyb