

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

919 WRIT PETITION NO.9594 OF 2018

**PRAVIN ASHOK INGALE
VERSUS
SUHAS JUGALKISHOR AGRAWAL AND OTHERS**

...
Advocate for Petitioner : Shri J.M. Murkute
Advocate for Respondent Nos.1 to 3 : Shri J.V.Patil h/f.
Shri P.R. Katneshwarkar

...
**CORAM : P.R.BORA, J.
DATE: 1st August, 2019**

PER COURT:-

1. Heard finally with the consent of learned counsel appearing for the parties. Perused the impugned order.
2. Application Exhibit-49 was filed by the present petitioner, who is the plaintiff, in Regular Civil Suit No.13 of 2013, pending on the file of Civil Judge, Junior Division at Yawal, seeking amendment in the Suit plaint. The amendment was sought in the four boundaries as are mentioned in paragraph No.1 and some portion in paragraph No.2 of the Suit plaint. The learned Trial Court has rejected the said application on the ground that the petitioner - plaintiff has not explained as to why the said fact could not be noticed earlier by him and has been noticed only when the matter is fixed for evidence. It is also mentioned in

the order that the petitioner – plaintiff has sought amendment twice and at that time the said amendment could have been sought.

3. Though, the learned counsel appearing for the respondents has supported the impugned order, it appears to me that the Trial Court has failed in appreciating the fact that the amendment, which was sought by the plaintiff, would not change the nature of the Suit, and in such circumstances, for the effective decision of the Suit, the learned Trial Court must have permitted the petitioner – plaintiff to carry out the said amendment. Ultimately, burden is on the petitioner - plaintiff to prove four boundaries of his own property.

4. For the reasons stated above, the petition deserves to be allowed. Hence, the following order:-

ORDER

I) The Writ Petition is allowed.

II) Order dated 06.06.2018, passed below Exhibit-49 by Civil Judge, Junior Division, Yawal, in Regular Civil Suit No.13 of 2013, is set aside.

III) The application filed at Exhibit 49 shall stand allowed.

IV) The Trial Court shall permit the petitioner – plaintiff to carry out necessary amendment.

V) It need not be stated that the Suit is at the stage of hearing and as such the Trial Court shall make endeavour to decide the said Suit as expeditiously as possible.

VI) It also need not be stated that, after the amendment is carried out, it would be open for the defendants to submit their written statement to the amendment carried out in the plaint.

VII) The Writ Petition is disposed of in the aforesaid terms.

(P.R.BORA)
JUDGE

SPT