

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.9788 OF 2019

Haji Nasirkhan Wazirkhan Pathan

Petitioner

Versus

Mohd. Hanifkha Mastankha & others

Respondents

Mr.B.R.Waramaa, advocate for the petitioner.

CORAM : RAVINDRA V. GHUGE, J.

DATE : 07th August, 2019

PER COURT:

1 The petitioner - original plaintiff in Regular Civil Suit No.31 of 2008 is aggrieved by the order dated 30.04.2019 passed by the trial Court by which application Exhibit-130 seeking amendment to the plaint only to correct the encroachment area, has been rejected. It was stated that the encroached area is “30” Ares and was erroneously typed as “13” Ares. This is the only correction sought.

2 I have considered the strenuous submissions of the learned advocates for the petitioner and have perused the 7 grounds formulated by him in the memo of petition. He has strenuously criticised the impugned order. His grievance is that the trial Court has observed in the impugned order that as the plaintiff has averred that the encroachment is to the extent of “13”

Ares and the report of the Court Commissioner indicates encroachment of “30” Ares, the suit would suffer.

3 I have perused the impugned order. The application seeking amendment is based on the report of the Court Commissioner. The plaintiff has categorically pleaded that the encroachment was of 13 ares. It cannot be ruled out that during the pendency of the suit for more than 10 years, the encroachment may have increased. This aspect cannot be prejudged and is to be left to the trial Court to be considered on its own merits at the final stage.

4 Moreover, when the Court Commissioner has submitted his report indicating that the encroachment is of about “30” Ares, unless the said report is proved to be unreliable and undependable by oral evidence, neither can the trial Court discard the report of the Court Commissioner, nor can it apply the report adversely to the suit so as to cause prejudice to the plaintiff. The suit will have to be decided on its own merits and in the light of the overall oral and documentary evidence. No amendment in the plaint would be necessary.

5 In view of the above, this petition is disposed off.

RAVINDRA V. GHUGE
JUDGE

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