

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

WRIT PETITION NO.11206 OF 2019

**RAMECHANDRA PANNALAL VAKIL AND OTHERS
VERSUS
SUBHASH KESHARMAL BARLOTA THROUGH GPA
MOHAMAD ABDUL SHAKIL MOHAMAD**

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Advocate for the Petitioners : Shri A. N. Sabnis

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 11th SEPTEMBER, 2019.

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PER COURT :

1. The petitioners, who are original defendants in Regular Civil Suit No. 179/2018, are aggrieved by the order dated 16/07/2019 passed by the Trial Court, by which, application Exhibit 07 filed by the plaintiff to amend the plaint, has been allowed.

2. I have considered the strenuous submissions of the learned Advocate for the petitioners. With his assistance, I have gone through the petition paper book and the ten grounds formulated in the memo of the petition. He has relied upon the judgment of the Honourable Apex Court in the

matter of *M. Revanna Vs. Anjanamma and others, (2019) 4 Supreme Court Cases 332.*

3. The record reveals that after the suit was preferred on 17/02/2018, defendant Nos. 1 to 3 filed their reply to the application Exhibit 5, on 25/04/2018. Defendant No. 4 filed the written statement on 04/06/2018. After going through the written statements filed by the defendants, the plaintiff, for seeking amendment to the plaint, preferred an application Exhibit 7 on 06/09/2018 clearly stating that the suit was filed by the plaintiff for protecting his ownership over the suit property. He had expressed an apprehension that the defendants would make every attempt to frustrate the rights of the plaintiff and would encroach upon the suit property with the intention to grab such property.

4. After the written statements were filed, the plaintiff realized that defendant No. 4 had committed an encroachment on the suit property and had started developing the property. The map produced by defendant No. 4 was contrary to the original map of the C.T. Survey Office. Realizing that

defendant No. 4 is attempting to encroach upon the suit property, that the plaintiff filed Exhibit 7 to put forth pleadings to the extent of such encroachment and add a prayer to restrain the defendants from carrying out construction on the encroached part and to recover the encroached portion.

5. In my view, as the plaintiff gathered knowledge from the written statements and moved Exhibit 7, it can be said that he gathered knowledge only on account of the pleadings of the defendants. Realizing that the property is already encroached upon, he can surely put forth the prayer for seeking recovery of such encroached portion.

6. The law laid down by the Honourable Apex Court in *M. Revanna (supra)*, especially the observations in paragraphs 7 and 9, would not be of any assistance to the petitioners since the plaintiff has specifically based Exhibit 7 upon going through the pleadings of the defendants in the written statements.

7. This petition, being devoid of merit is, therefore,

dismissed. Needless to state, after the defendants file their additional written statements to the extent of the amended portion in the plaint, the Trial Court would consider the pleadings and frame issues according to the rival pleadings of the parties.

(RAVINDRA V. GHUGE, J.)

shp/-