

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3302 OF 2019

Balasaheb S/o Kashinath Shinde

Petitioner

Versus

Anupama Shivrudra Rudrake

Respondent

Mr. M.S. Bhosale, Advocate for the petitioner.

CORAM : RAVINDRA V. GHUGE, J.

DATE : 10/07/2019

PER COURT :

1 The petitioner, original defendant in RCS No. 88/2014, is aggrieved by the impugned order dated 20.07.2017, by which the application Exhibit-23 filed by the plaintiff, praying for an amendment under Order VI Rule 17 of the Code of Civil Procedure, has been allowed.

2 The learned advocate for the petitioner has strenuously criticised the impugned order. He has drawn my attention to the averments set out in the memorandum of the petition. He submits that the plot, which he is presently possessed and on which he has erected a construction, was purchased from the father of the plaintiff.

After the demise of his father, the plaintiff has filed the suit only to take advantage of the demise of his father and to grab the property. By seeking amendment to include the pleadings about a construction carried out by the defendant, as set out in paragraph no. 1 under Exhibit-23, the nature of the suit would be changed. He therefore prays that the impugned order deserves to be quashed and set aside.

3 I find from the record that the plaintiff has filed application Exhibit-23 on the ground that the defendant has carried out certain construction during the pendency of the suit. He has therefore prayed for demolition of the said construction which is on account of the encroachment allegedly made by the defendant over an area of 9 ft. 4 inches on the East-West side and 13 ft. on the South-North side. He has made further encroachment on two blocks owned by him to an extent of 20 ft. on the East-West side. Consequentially, he has prayed in the application for introducing a prayer that the said construction on the encroached area be demolished and he be given the possession of the encroached area.

4 It is obvious that the allegations made by the plaintiff will have to be gone into by the trial Court. It is settled law that merits of the amendment are not to be considered at this stage. The defendant

would have a right to file an additional written statement to counter the amended portion in the plaint.

5 Considering the above, I do not find that the trial Court has committed any error or has passed an order which could be branded as being perverse or erroneous.

6 This petition, being devoid of merit, is therefore dismissed.

(RAVINDRA V. GHUGE, J.)

adb