

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13554 OF 2017

DNYANESHWAR KRISHNA RAUT
VERSUS
TUKARAM KRISHNA RAUT AND ANOTHER

Mr.A.S.Sawant, Advocate for the petitioner.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 04/09/2019

PER COURT :

1. Despite service of Court notice, the respondents have not entered an appearance either through an Advocate or in person.
2. This Court (Coram : V.K.Jadhav, J.) had passed the following order on 21/11/2017 :-

“ *Heard.*

2. *The learned counsel for Petitioner submits that though the Petitioner has instituted a suit for simplicitor injunction, in the month of December 2012, the Respondent/Defendant has obtained one illegal order from the Collector, Ahmednagar and on the basis of the said order, mutated his name in respect of Plot No.18 and even on the basis of the said order passed by the Collector, made Kaccha construction over the portion of the suit*

plot by making encroachment over it. The learned counsel submits that the Petitioner has challenged the said order passed by the Collector before this Court in Writ Petition No.1186 of 2013 and this Court by order dated 11th February, 2014, quashed and set aside the said order passed by the Collector, Ahmednagar. By way of an application Exhibit 33, the Petitioner has brought to the notice of the Trial Court all these subsequent events and also sought permission to carry out the amendment in the plaint and by incorporating the prayer for declaration of the ownership and also for removal of the encroachment etc. However, the Trial Court has rejected the said application only on the ground that the amendment sought and incorporation of the new prayer in the suit, would change the nature of the earlier sit entirely.

3. In view of the above submissions, issue notice to respondents, returnable on 16th January, 2018.

4. Meanwhile, the further proceedings in Regular Civil Suit No.841 of 2012 are hereby stayed till the next date of hearing.”

3. I have considered the submissions of the learned Advocate for the petitioner/original plaintiff and have gone through the 6 grounds formulated in the memo of the petition.

4. Considering the reasons assigned by this Court in the order dated 21/01/2019, this petition is allowed. The impugned order dated 08/092017 is quashed and set aside and application Exh. 33

is allowed.

5. The plaintiff shall carry out the amendment in the plaint on or before 25/09/2019 and shall tender a freshly typed copy of the amended plaint on the same date before the Trial Court. The defendants are at liberty to file additional written statement to oppose the amended portion of the plaint and such written statements shall be filed on or before 22/10/2019.

(Ravindra V.Ghuge, J.)