

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

WRIT PETITION NO.8339 OF 2019

**MADHAV BAPU KALE AND OTHERS
VERSUS
CHANDRAKANT PANDHARINATH KULKARNI AND ANOTHER**

...
Advocate for the Petitioners : Shri N. D. Sonavane

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 13th AUGUST, 2019.

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PER COURT :

1. The petitioners, who are original defendant Nos. 1 to 3 in RCS No. 419/2016, are aggrieved by the order dated 10/08/2018, by which, the Trial Court has allowed application Exhibit 19 and has permitted the plaintiff to add a prayer clause as regards recovery of the possession of the encroached portion.

2. The learned Advocate for the petitioners has strenuously criticized the impugned order. Contention is that the plaintiff has filed the suit purely for perpetual injunction. He had earlier moved an application for seeking appointment of a court commissioner. The said application was subsequently

withdrawn. Exhibit 19 was thereafter filed putting forth a new story that the petitioner has got the suit land measured by the TILR during the pendency of the suit and it is revealed that the defendant had encroached upon 40 R. land. He has now put forth the proposed prayer seeking recovery of the possession.

3. It is further submitted that the nature of the suit would be changed. A suit for injunction would be converted into a suit for recovery of possession. Due diligence is not explained.

4. Upon considering the submissions of the learned Advocate and on going through the petition paper book with his assistance, I find that the plaintiff has filed the suit by putting forth a case that the defendants are disturbing his peaceful possession and they are likely to dispossess him. Perpetual injunction is sought to protect the suit property. It is then stated in Exhibit 19 that during the pendency of the suit, the suit land was measured by the TILR. The petitioner noticed that though he owns and possesses 9 acres of land, there has been an encroachment to the extent of 40 R.

5. In my view, when the suit was filed for protecting the land against encroachment and an injunction was sought, the plaintiff can very well amend the plaint to recover the possession of such portion of land, which may have been subject matter of encroachment at the hands of the defendants during the pendency of the suit. If such amendment is allowed, the defendants can certainly file their additional written statement to the extent of the amendment.

6. In view of the above, this petition, being devoid of merit is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

shp/-