

SAS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10091 OF 2018

Sau. Rohini Dattatrey Bandal ..Petitioner.

V/s.

Sau. Jayashree Dhanaji Takawane & Ors. ..Respondents.

Mr.Pranav H.Bhoite for the petitioner.

Mr.Vaibhav Gaikwad for respondent Nos.1 to 3.

CORAM : NITIN W.SAMBRE, J.

DATE : OCTOBER 15, 2019

P.C. :-

Heard respective counsel.

2. Exhibit-58 in Regular Civil Suit No.119/2011 pending on the file of second joint Civil Judge, Junior Division, Daund, an application moved under Order VI Rule 17 of the Code of Civil Procedure ('the CPC' for short) seeking amendment to the plaint based on the Commissioner's report. The said application came to be rejected vide the impugned order dated July 19, 2017 with an observation that the issue of encroachment can be decided only after recording of appropriate evidence.

3. Learned counsel for the petitioner submits that the amendment needs to be allowed to avoid multiplicity of the proceedings and to enable the trial Court to effectively and completely adjudicate the controversy in the suit.

4. The submissions of learned counsel for the respondent-defendants are, mere appointment of the Court Commissioner and its report cannot be a conclusive proof of encroachment as oral evidence is required to be adduced to establish the same. He would urge that the petitioner is trying to improve her case by carrying out appropriate amendment which in any case is not permissible. As such, he sought dismissal.

5. Considered rival submissions.

6. This Court is required to be sensitive to the principle which governs the exercise of powers under Order VI Rule 17 of CPC, of which one of the important aspect is to avoid multiplicity of the proceedings. Upto an appropriate stage of the suit, the parties are given liberty to move for amendment of the pleadings.

7. In the case in hand, during the course of the proceedings, pursuant to the report of the Court Commissioner, an amendment application is moved based on

the developments during pendency of the suit in regard to alleged encroachment carried out by the defendants.

8. In the aforesaid backdrop, keeping in mind the principles of avoiding multiplicity of proceedings and taking into consideration the nature of the suit, the order passed below application Exhibit-58 is not sustainable and as such quashed and set aside. Application Exhibit-58 is allowed subject to payment of costs of Rs.5,000/-, to which the respondents-defendants shall be entitled to withdraw.

9. If the costs is not deposited within a period of six weeks from today, the petition shall be deemed to have been dismissed without further reference to the Court.

10. Needless to clarify that the onus will be on the petitioner to establish her ownership over the alleged encroached portion.

(NITIN W.SAMBRE, J.)