

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

919 WRIT PETITION NO.5357 OF 2020

Lahu s/o Vithal Gaikwad & Anr.

... Petitioners

Versus

Sahadu Ramrao Warkar & Ors.

... Respondents

...

Advocate for Petitioners : Mr. Gandhi Amol S.

Advocate for Respondent Nos.1 to 9: Mr. V. H. Pathade

...

CORAM : AVINASH G. GHAROTE, J.

DATE : 3rd July, 2021

P. C. :

. The present petition impugns the order dated 02.01.2020 by the Trial Court whereby the application under Order 6 Rule 17 of CPC filed by the plaintiff, to amend the plaint by inserting Para 10(b), has been rejected, on the ground, that by the proposed amendment, the plaintiff was trying to incorporate a relief of measurement of disputed properties through the Government Officials, which did not seem to be in conjunction or consequential to the main relief. It is worthwhile to note, that in the plaint, the relief of possession is claimed, in case it is found that the defendant/s have encroached upon the suit property. The proposed amendment, only seeks to get the property measured from the T.I.L.R and fixation of

the boundaries, which clearly is a step in aid, to the reliefs claimed in the plaint. Though the issues have been framed in the suit, the evidence is not yet commenced and therefore, the trial has not begun. That being the situation, the impugned order cannot be sustained and is hereby quashed and set aside. The application for amendment filed by the plaintiffs at Exhibit-52, is allowed. The petitioner/plaintiff is directed to carry out the amendment within a period of seven (7) days from the date of production of a copy of this order before the Trial Court. Needless to say, that the defendant/s shall be at liberty to consequentially amend the written statement by making appropriate averments. The petition is, accordingly, allowed. Rule made absolute. No order as to costs.

(AVINASH G. GHAROTE, J.)

Sameer