

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3987 OF 2016

Sau. Muktabai Vitthal Gavali,
Age 62 years, Occu. Agri. And Household,
Through its GPA
Vitthal Kachu Gavali,
Age 65 years, Occu. Agri.,
R/o. Madhi, Taluka Kopargaon,
District Ahmednagar. .. Petitioner

Versus

1. Sau. Shakuntala Bhagwan Rajguru,
Age Major, Occu. Agri. and Household,
2. Gorakshanath Sukhdeo Gavali,
Age Major, Occu. Agri.,
3. Rangnath Ramchandra Gavali,
Age Major, Occu. Agri. and Household,
4. Vasant Shankar Gavali,
Age Major, Occu. Agri.,

All above R/o. Madhi Budruk,
Taluka Kopargaon, District Ahmednagar .. Respondents

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Mr. S. S. Kulkarni, Advocate for Petitioner
Mr. S. B. Kadu, Advocate for Respondent no. 1
Respondents no. 2 to 4 served

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CORAM : NITIN B. SURYAWANSHI, J.
DATE : 21-12-2021

JUDGMENT :-

Rule. Rule made returnable forthwith. Heard finally with
the consent of learned Advocates for the parties.

2. This petition is directed against the common order dated 04.03.2016 passed by the learned Joint Civil Judge, Junior Division, Kopargaon, District Ahmednagar, below Exhibits 60, 62 and 70 in Regular Civil Suit No. 56 of 2010, thereby rejecting the applications filed by original plaintiff.

3. The plaintiff-petitioner filed suit for measurement of the suit property and for possession of the encroached portion with consequential injunction. During pendency of the suit, the Taluka Inspector of Land Records (T.I.L.R.) came to be appointed as Court Commissioner and he examined the suit property and it was revealed that 12 R. land belonging to plaintiff is encroached by the defendants. Initially, the said report was objected by the plaintiff. The plaintiff filed his affidavit in lieu of evidence, and thereafter, filed these three applications (Exhibits- 60, 62 and 70).

. Application (Exhibit-62) is filed seeking to discard the evidence affidavit filed by plaintiff at Exhibit-46 and for permission to file fresh affidavit.

. Application (Exhibit-70) is filed seeking deletion of paragraph no. 4 in affidavit (Exhibit-46) i.e. in respect of objection and non-admissibility of the measurement carried out during the pendency of the suit, by the T.I.L.R.

. Application (Exhibit-60) is an amendment application to add paragraph in respect of accepting the measurement carried out during the pendency of the suit, particularly M. A. No. 465/25/11/11.

All the three applications (Exhibits- 60, 62 and 70) were rejected by the trial Court. Hence, the present petition.

4. Heard learned Advocate for the petitioner and learned Advocate for respondent no. 1.

5. Perusal of the impugned order reveals that the trial Court was justified in rejecting the applications Exhibit-62 and Exhibit-70. The petitioner has failed to make out a case, to warrant interference in the order of rejection of Exhibit-62 and Exhibit-70. No illegality or perversity is found in the order or rejecting the applications Exhibit-62 and Exhibit-70.

6. So far as application (Exhibit-60) seeking amendment in the plaint is concerned, admittedly, the suit is filed seeking measurement of the suit property and for removal of encroachment of the defendants on the suit property. It is a matter of record that the T.I.L.R. was appointed as Court Commissioner, he has filed a report showing encroachment to the extent of 12 R. on the part of defendants.

7. Since, the necessary foundation is laid by the petitioner/plaintiff in the suit and there are pleadings about encroachment on the part of the defendants/respondents, in the facts of the present case, so as to avoid multiplicity of the proceedings, in my view, it is necessary in the interest of justice to permit the plaintiff to carry out amendment to the effect of removal of encroachment of 12 R. land made by the defendants. After the amendment is carried out by the plaintiff, the defendants shall be entitled to file additional written statement.

Hence, the following order :-

ORDER

- I. Writ petition is allowed in following terms -
 - (a) The impugned order passed below application (Exhibit-60) is quashed and set-aside.
 - (b) Application (Exhibit-60) is allowed to the extent of permitting the petitioner/original plaintiff to incorporate the pleadings in respect of encroachment of area 12 R land made on the suit property by the defendants.
 - (c) Needless to mention that the defendants shall file additional written statement after amendment is carried out by the petitioner-original plaintiff.
- II. Rule is made absolute in above terms.

(NITIN B. SURYAWANSHI)
JUDGE

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