

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

WRIT PETITION NO. 4678 OF 2020

Vaijinath Bhanudas Shelke

..PETITIONER

VERSUS

Pramod Narsing Kadam and Others

..RESPONDENTS

Mr. M.U. Shelke, Advocate for petitioner

....
....

**CORAM : R.G. AVACHAT, J.
DATED : 11th MARCH, 2021**

PER COURT :

1. Heard.
2. Order dated 12th June, 2019 passed by the Joint Civil Judge Senior Division, Osmanabad below application Exhibit 100 in Regular Civil Suit No. 176 of 2014 is under challenge in this writ petition. By the impugned order, the application for amendment of the plaint came to be allowed. Defendant No.2 in the suit is, therefore, before this Court.
3. Learned counsel for the petitioner/Defendant No.2 would submit that the application for amendment has been allowed after hearing of the suit has commenced. By the proposed amendment, the nature of suit has

altogether been changed. The plaintiff/respondent is in no way concerned with the properties in the suit.

4. The suit, being Regular Civil Suit No. 176 of 2014 has been filed for declaration and perpetual injunction. The plaintiff claimed declaration to the effect that the house properties bearing Gram Panchayat House Nos. 174 and 175 described in the plaint belong to the plaintiff/Respondent No.1. He claims to be in possession thereof. The petitioner/Defendant No.1, on the other hand, claimed title to and possession over the suit properties.

5. True, hearing of the suit has commenced. The Respondent No.1/plaintiff preferred application (Exh.100) for amendment of the plaint. He proposed to introduce in the plaint the matter that :- “Pending the suit, son of the petitioner/Defendant No.1 encroached on the suit property bearing House No.175. He has constructed a tin shed thereon.” The suit for perpetual injunction was, therefore, sought to be converted into the suit for mandatory injunction i.e. for removal of tin shed and possession of the land beneath the tin shed. The son of the petitioner/Defendant No.1 was also sought to be made party to the suit as it is he, who is alleged to have constructed the tin shed.

6. The trial Court, on hearing the parties, was pleased to allow the application for amendment of the plaint. I do not find any jurisdictional error

in allowing the said application. It needs no mention that the suit for injunction can be converted into the suit for possession. Such an amendment is necessary for avoiding multiplicity of proceedings. The merits of the proposed amendment cannot be gone into at the stage of hearing the application for amendment. The respondent/plaintiff came with a case that pending the suit, the tin shed has been constructed on the suit property. The trial Court has referred to the photographs indicating the construction of the tin shed in progress. It also referred to a police complaint lodged by the plaintiff/Respondent No.1 in connection with the alleged encroachment. The said fact has also surfaced during the evidence of plaintiff's Witness No.2, an official from the village panchayat.

7. In this factual backdrop, the trial Court was justified in allowing the application for amendment of the plaint. Writ petition is thus sans of merit. Same is, therefore, dismissed.

(R.G. AVACHAT, J.)

SSD