

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.939 OF 2022

Laxman Kisan Chavan
Age- 53 years, Occ- Agriculture,
R/o. Khokar, Tq. Shrirampur.
Dist. Ahmednagar.

...PETITIONER

VERSUS

1. Mr. Nandkumar Kisanrao Chavan
Age- 45 years, Occ- Agri.,
2. Sow. Meera w/o Nandkumar Chavan
Age- 40 years, Occ- Agri.,
3. Kum. Nilima Nandkumar Chavan
Age- 22 years, Occ- Education.,
4. Nilesh Nandkumar Chavan
Age- 20 years, Occ- Education.,
5. Sow. Mangal Machindra Kale
Age- 55 Years, Occ- Agril.,
6. Sow. Hirabai Dattatraya Kale
Age- 45 years, Occ- Agri.,
7. Sow. Chaya Rajendra Kale,
Age- 32 years, Occ- Agri,
8. Smt. Beby Karbhari Chavan
Age- 50 years, Occ- Agri.,
9. Aniket Karbhari Chavan

10. Age- 30 years, Occ- Agri.,
Abhijeet Karbhari Chavan
Age- 28 years, Occ- Agri.,
11. Sow. Manisha Aniket Chavan
Age- 27 years, Occ- Agri.,
12. Sow. Deepali Abhijeet Chavan
Age- 25 years, Occ- Agri.,
All R/o Khokar Tq. Shrirampur
Dist. Ahmednagar.

...RESPONDENTS

Mr. Rahul Tambe, for Petitioner.

Mr. M.K. Bhosale for Respondent No. 1 to 4, 8 to 12.

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 7th MARCH, 2022

JUDGMENT :

1. Rule. Rule made returnable forthwith and heard with the consent of parties.

2. This petition is directed against the order passed by the Civil Judge Senior Division, Shrirampur, below Exhibit-124 in Regular Civil Suit No. 108/2013, thereby rejecting the application filed by the Petitioner under Order VI Rule 17 of Code of Civil Procedure.

3. The suit is filed by the Petitioner/Plaintiff seeking

injunction and for fixing boundaries of the suit property. During the pendency of suit the parties have led their evidence and the present application is filed by the Petitioner contending that one month prior to the date of filing of application, the defendants have encroached on 62R land of the Petitioner from eastern and southern side. Rough sketch of the encroachment by the defendants is also placed on record along with application filed on 23.09.2021. The said application is resisted by the Respondent/Defendant contending that the said fact of encroachment should be strictly proved by the Petitioner/Plaintiff. The Plaintiff has not placed on record any document and/or material to show that there is such encroachment on the part of defendants. It is also contended that there is 3 feet high north-south bandh/boundary between the land of Plaintiff and Defendants and there are old trees on the same. Therefore, encroachment as alleged is not possible.

4. The Trial Court has rejected the application mainly on the ground that the matter is old and pending since long time for final arguments. The parties have already closed their evidence and the Plaintiff has failed to explain the delay or the circumstances which

prevented him from seeking such amendment at the earliest point of time. Therefore, in view of proviso to Rule 17 of Order 6 of the Code of Civil Procedure, the amendment application since was moved at belated stage, is rejected.

5. I have heard the rival submission of learned advocate for the Petitioner and learned advocate for Respondent. Perused the documents placed on record. It is true that the parties have closed their evidence, however, the fact remains that during the pendency of the suit, the encroachment is allegedly made by the Defendants. In that view of the matter and so as to avoid multiplicity of the proceedings, the Trial Court ought to have allowed the amendment application filed by the Petitioner.

6. In *Maruti Vithoba Kulal and another Vs. Nivrutti Devram Kulal & others* reported in 2018 (5) Mh.L.J., 290, the co-ordinate bench of this Court has held that the amendment can be allowed at any stage of proceedings.

7. In *Shant Snacks and Beer Bar, Pune Vs. Chandrakant Shakarrao Pethkar and Others*, reported in 2020 (4) Mh.L.J., 137, the co-ordinate bench of this Court has held that amendment of the pleadings based on subsequent events cannot be rejected merely because they were not pleaded in connected suit.

8. Coming to the facts of the present case, taking into consideration the averments made in the amendment application and the reply filed by the Defendant to the same, the amendment is required to be allowed. The Trial Court was not justified in coming to the conclusion that there is delay and the application is filed at belated stage. As per the averments made by the Petitioner/Plaintiff the encroachment made one month prior to the date of filing of application. Therefore, there cannot be said to be any delay in filing the amendment application. No prejudice is likely to be caused to the Defendants if the amendment is allowed. The defendants are entitled to file their additional written statement if the amendment is allowed. The burden will be on Petitioner/Plaintiff to prove that encroachment as alleged by him is made by the Defendants. In that view of the

matter, the writ petition is allowed in terms of prayer clause 'B'. The impugned order passed by learned Civil Judge Senior Division, Shrirampur, below Exhibit-124 in Regular Civil Suit No. 108/2013 is hereby quashed and set aside.

9. The application Exhibit-124 is allowed, subject to the Petitioner paying costs of Rs. 5,000/- to the defendants in the Trial Court. The amendment shall be carried out within two weeks from the date of receipt of this order.

10. Needless to mention that the Respondents/Defendants shall be at liberty to file additional written statement and the parties will be entitled to lead evidence in support of their rival contentions.

11. With these directions, the writ petition is disposed of.

[NITIN B. SURYAWANSHI]
JUDGE