

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

WRIT PETITION NO. 1473 OF 2015

Shivaji s/o Dagdu Ughade (Kasarikar),
Age : 53 years, Occu. Service,
R/o. Kasari (Bodkha), Tq. Dharur,
At Present Majalgaon Kalva,
Sub Division No. 51, Chief Office,
Narwadi, Gokunda, Kinvat,
Tq. Kinvat, Dist. Nanded.

...Petitioner
(Orig. Plaintiff)

Versus

1] Sidram s/o Kondiba Sonwane,
Age : 43 years, Occu. Business,
R/o. Kasari (Bodkha), Tq. Dharur,
Dist. Beed.

2] The Gramsevak,
Gram Panchayat, Kasari Bodkha,
Tq. Dharur, Dist. Beed.

...Respondents
(Ori. defendants)

.....

Shri. Prakash M. Shinde, Advocate for the petitioner
Shri. R.K. Kasat h/f Shri. S.S. Thombre, Advocate for respondent
no.1

.....

CORAM : PRITHVIRAJ K. CHAVAN, J.
RESERVED ON : MARCH 16TH, 2022
PRONOUNCED ON : MARCH 23RD, 2022

JUDGMENT : -

1. Rule. Rule made returnable forthwith.
2. Petition is taken up for final disposal by consent of learned Counsel for the parties.

3. The petitioner, by way of this petition, challenges an order dated 09.01.2015 passed below Exh. 63 in Reg. Civil Suit No. 22/2011 by the learned Civil Judge Junior Division, Dharur, whereby an application for amendment of the plaint filed by him, has been rejected.

4. A suit for declaration of ownership and perpetual injunction has been filed by the petitioner/plaintiff stating therein that the respondent/defendant had encroached upon the suit property. Issues were framed. Affidavit in lieu of examination-in-chief has been filed by the petitioner. However, it is the contention that due to inadvertence the Petitioner could not describe the area of alleged encroachment in the plaint though it has been specifically averred as regards encroachment. By the proposed amendment, the petitioner sought to amend the plaint by adding paragraph no. 11-A into the plaint to the effect that there is an encroachment *ad-measuring* 14 ft. x 18 ft. by the respondent/defendant in the suit property.

5. The learned Civil Judge by an impugned order rejected the application mainly on two grounds viz. the proposed amendment is sought to be made only to fill up the lacunae when the trial has already commenced and secondly, there was no due diligence on the part of the Petitioner to aver in the plaint about the aforesaid encroachment though the petitioner was aware of it.

6. The law on the point of amendment of the pleadings has been settled down by a catena of decisions of various Courts including the Supreme Court. The main object of amendments in the pleadings is to avoid multiplicity of litigation and to resolve the dispute amicably once and for all.

7. Though the learned Counsel for the respondent vehemently opposed the petition on the ground that the evidence had already begun and in view of Order VI Rule 16 of the Code of Civil Procedure, 1908, the amendment should not be considered unless the Court returns a finding that in spite of due diligence, the party could not have raised the matter before the commencement of the trial.

8. Per contra, the learned Counsel for the petitioner emphasised to allow the petition as, according to him, neither any prejudice would be caused to the defendant/respondent who already knew the averments in the plaint, nor there would be any change in the nature of the suit. It is *inter alia* submitted that the petitioner being a rustic, illiterate villager and the Counsel appearing for him in the trial Court is from mofussil area, it can be taken as inadvertent mistake and also despite due diligence, he could not have raised the issue before the commencement of the trial.

9. Having considered the respective submissions at bar, I am of the view of that liberal approach is required to be taken, for, firstly, there would not be any prejudice to the respondent if the proposed amendment is allowed as, there would be no change in the nature of the suit. Secondly, it is not the case that the respondent is taken by surprise due to the proposed amendment. What is sought to be done by the petitioner is simply to amplify the facts of the case. Last but not the least, in order to avoid the multiplicity of the litigation, the proposed amendment needs to be allowed.

10. As such, the impugned order needs to be interfered with as the learned trial Judge has failed to appreciate the attending facts and circumstances in it's correct perspective. Consequently, the following order is passed :

ORDER

- [i] The petition is allowed.
- [ii] The impugned order dated 09.01.2015 passed below Exh.63 in Reg. Civil Suit No. 22/2011 by the learned Civil Judge Junior Division, Dharur, is quashed and set aside.
- [iii] The petitioner shall amend the plaint within fifteen (15) days of passing of this order in view of the application dated 03.07.2014.

- [iv] After amending the plaint, the respondent/defendant is at liberty to make consequential amendments, if any.
- [v] After the amendments, the learned trial Court shall proceed further in accordance with law.

11. Rule is made absolute in the aforesaid terms with no order as to costs.

[PRITHVIRAJ K, CHAVAN]
JUDGE