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

WRIT PETITION NO.10582 OF 2021

**BHAGWAT DALPAT BAVSKAR
VERSUS
VITTHAL SAKHARAM DEVRE**

...
Mr G. V. Wani, Advocate for petitioner

CORAM : SMT. BHARATI DANGRE, J.

DATE : 25th February, 2022

PER COURT:

1. Heard the learned Counsel for the petitioner.

The petitioner is the original plaintiff, who filed suit for mandatory injunction in Regular Civil Suit No.61/2013. Paragraph No.1 to the plaint set out the suit property as plot No.1 in Gut No.85/1 with it's length and breadth with the total area admeasuring 200 sq. mtrs. with all the four boundaries are set out therein.

2. While suit was reached the stage of hearing, on conclusion of the evidence, the plaintiff moved an application below Exh.55, seeking permission to amend his suit and correct the boundaries on the southern side as described in paragraph 1 of the plaint.

3. The application was strongly opposed by the defendant on the ground that the plaintiff has not been able to demonstrate that change has been occurred after instituting of the suit.

(2)

This application came for consideration before the learned Court and on two grounds, the application came to be rejected; firstly, on the ground that amendment is sought at the fag end of the proceedings and secondly, the plaintiff who is governed by the proviso to Order XI Rule 17 while he seek an amendment, must adopt due diligence, but the application do not disclose the most important aspect that when this change has occurred in the suit property. Since the plaintiff was unable to demonstrate that this occurred during the pendency of the suit, the learned Judge is perfectly justified in rejecting the application, since an amendment though can be allowed at any stage of the proceedings when the fag end as in the present case sought to be introduced principle of due diligence must be invoked and applied to such an amendment.

In the wake of the above, by upholding the impugned order, the writ petition is dismissed.

(SMT. BHARATI DANGRE, J.)

sjk