

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

WRIT PETITION NO.8376 OF 2013

SAYED ABDULLAH SAYED MAHEMOOD ..PETITIONER

VERSUS

SAYED HAROON SAYED MAHEMOOD
AND ANOTHER ..RESPONDENTS

...

Mr. Prakash S. Paranjape, Advocate for the
Petitioner.

Mr. R. B. Deshmukh, Advocate for Respondent Nos.1
and 2.

...

CORAM : S. V. GANGAPURWALA, J.

DATED : 14th JANUARY, 2022.

PER COURT:-

1. The petitioner has filed Suit for injunction. During the pendency of the Suit the petitioner filed an application for amendment thereby seeking removal of encroachment. The application is rejected. Aggrieved thereby, the present petition.

2. Mr. Paranjape, learned counsel for petitioner submits that, during the pendency of the Suit, the petitioner is dispossessed and/or respondents have encroached upon the property. Because of the same the amendment is necessitated.

3. The learned counsel for defendants/respondents submits that, the nature of the relief and the Suit is changed. The Suit

property is also changed. Earlier, the Suit was for simplicitor injunction of a different area and now Suit for possession is claimed for a different area by increasing the area. The same is not permissible. The Trial had commenced. The Trial Court has not committed any error.

4. In the application, the petitioner has stated that, during the pendency of the Suit, the defendants had constructed the structure on the Suit portion. It is for the plaintiff to prove the alleged encroachment and the construction made by defendants, so also all the other issues. As the petitioner contends that the encroachment and/or possession is during the pendency of the Suit, then the said aspect ought to be considered. Of course, the merits of the amendment application are not required to be gone into while considering the application for amendment.

5. In view of the above, I am inclined to allow the application for amendment. However, the petitioner also deserves to be mulct with cost.

6. In the result, I pass the following order:

ORDER

A. The impugned order is quashed and set aside. The application Exhibit-58 filed by the petitioner in Regular Civil Suit No.99/2009 is allowed on condition that the petitioner deposits cost of Rs.10,000/- within a period of

four weeks from today in the Trial Court. The deposit of cost is a condition precedent.

B. In case, cost is not deposited as directed above, the application for amendment shall stand rejected. If the cost as directed above is deposited, then the matter shall proceed further.

C. The amount deposited by the petitioner towards the cost is allowed to be withdrawn by the defendants.

7. Writ Petition is disposed of. No costs.

(S. V. GANGAPURWALA)
JUDGE