

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

914 WRIT PETITION NO.1186 OF 2021

**BHARAT KHANDU BANSWAL
VERSUS
MOCHI SAMAJ SUDHAR MANDAL THROUGH
NARAYAN GULABCHAND BANSWAL AND OTHERS**

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Advocate for Petitioner : Ms. Smita S. Kulkarni h/f.
Mr. Kiran M. Nagarkar

Advocate for Respondent No.1 : Mr. A.P. Sonpethkar

Advocate for Respondent No.2 : Mr. A.P. Bhandari

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CORAM : SANDEEP V. MARNE, J.

DATE : 21-12-2022

PER COURT :

. By this petition, petitioner has challenged the order dated 08.11.2019 passed by the Civil Judge Senior Division (Corporation Court), Aurangabad allowing plaintiff's application for amendment of the plaint.

2. It appears that when the application for amendment was filed on 18.07.2019, the trial in the suit had not commenced. The issues in the suit were framed on 27.02.2019. Since the trial in the suit had not commenced, plaintiff had every right to amend the plaint to the extent it did not change the nature of the suit.

3. The learned counsel for petitioner submits that the

amendment completely changes the nature of the suit. She has taken me through the Roznama and points out that plaintiff remained absent in the suit for about four years. She submits that when the trial Court was about to dismiss the suit, plaintiff moved the application for amendment. She further submits that the application has been allowed without granting an opportunity to petitioner to oppose the application for amendment.

4. I have heard the learned counsel for the parties and perused the record of the case.

5. As observed earlier, the trial in the suit had not commenced when the application for amendment was filed. The suit has been filed by plaintiff seeking injunction against defendant nos.1 to 4 from carrying any construction on eastern and northern side of plaintiffs property bearing CTS No.19771. In the amendment application it is alleged that defendant nos.1 to 4 have carried out the construction and have encroached upon the public road. Therefore plaintiffs sought amendment in the suit to add averment relating to construction carried out by defendant nos.1 to 4 as well as sought prayer against respondent nos.5 and 6 to demolish the construction carried out by defendant nos.1 to 4. The proposed amendment, in my

view, does not change the nature of the suit. In fact if the application for amendment would have been rejected, plaintiffs would be constrained to file another suit in respect of the same cause of action. By allowing the amendment, the trial Court has in fact prevented multiplicity of proceedings.

6. The statement of the learned counsel for petitioner that no opportunity was given to petitioner to oppose the application for amendment, appears to be erroneous. In fact, the trial Court has recorded that defendant nos.1 to 4 did not file any reply to the application for amendment despite granting opportunity.

7. Thus, no error is committed by the trial Court in allowing the application for amendment. The petition is devoid of merits and same is dismissed without any orders as to costs.

(SANDEEP V. MARNE, J.)