

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

928 WRIT PETITION NO.978 OF 2022

**ANNA VISHWANATRAO ANALDAS
VERSUS
ANJALI BALAPRASAD ANALDAS AND ANOTHER**

...
Advocate for Petitioner : Mr. Kurundkar Sunil V.

CORAM : MANGESH S. PATIL, J.
DATE : 24.06.2022.

PER COURT :

The petitioner is aggrieved by the order passed by the trial court permitting the respondents/defendants to carry out amendment in their counter claim.

2. The learned advocate for the petitioner vehemently submits that the respondents by practicing fraud and behind the back of the petitioner had entered into a compromise wherein the extent of the self-same suit property Gat No. 351 was shown as 1-H 52 Are. By way of proposed amendment the respondents are seeking to take a plea which is inconsistent with the contents of the compromise as to the area of the land. He would submit that the respondents though are the defendants in the suit, they are the plaintiffs *vis a vis* the counter claim being put forth by them and the parameters applicable to the amendment of plaint will have to be applied to which the trial court has miserably failed. He refers to the decision of the Supreme Court in the matter of **Usha Balasaheb Swami and Ors. Vs. Kiran Appaso Swami & Ors; 2007 SCR 1333.**

3. I have carefully gone through the order under challenge and the papers and considered the submissions of the learned advocate. At the

outset it is necessary to bear in mind that a party cannot be prevented from taking a particular stand. At the stage of amendment of pleadings, proof of the facts sought to be added is not expected. How the proposed amendment is factually untenable can certainly be demonstrated during the course of the trial.

4. By way of proposed amendment the respondents have been allowed to carry out the amendment so as to make an averment to the effect that in prayer clause, they are now seeking to add that the counter claim is in respect of a 52 Are portion out of total area of 1-H 32-Are from the land Gat No. 351. It has been specifically mentioned that only the figure 52-Are had remained to be inserted inadvertently.

5. Considering the fact that the proposed amendment merely makes the prayer precise, which is not inconsistent with the existing pleadings and when the parties are still to go for trial, no fault or illegality can be found in the order passed by the trial court allowing the amendment to be carried out in the counter claim.

6. Needless to state that it would be always open for the petitioner to lead evidence to disprove the averments in the counter claim.

7. There is no substance in the Writ Petition. It is dismissed.

(MANGESH S. PATIL, J.)

mkd/-