

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9421 OF 2018**

Govind Yashwant Nagtilak

.....Petitioner

V/s

Prabhakar Ananta Gajare

.....Respondent

Mr. Prasad B. Kulkarni for the Petitioner.

Mr. Ajay A. Joshi for the Respondent.

CORAM: NITIN W. SAMBRE, J.

DATE: JANUARY 31, 2022

P.C.:-

1] In a suit for removal of encroachment and possession being RCS No.39 of 2005, Application-Exhibit-79 preferred by the Petitioner/Plaintiff came to be rejected vide impugned order dated 19/11/2016 passed by Civil Judge, Junior Division, Pandharpur. Prayer for review of the said order vide Exhibit-84 also came to be rejected by order dated 08/03/2017. As such, this Petition.

2] I have heard respective parties at length and perused the suit claim and also pleadings which, by way of amendment, is sought to be inserted in the plaint. Petitioners/Plaintiffs based on subsequent measurement carried out through revenue authorities moved the said Application-Exhibit-79 and the amendment which is sought to be inserted is about correction in area and the clarification to the boundaries. That being so, it cannot be said that such amendment is going to change nature of the claim in the plaint by which

Respondents are taken by surprise. It is always open for respective parties to the suit to raise their appropriate objections at proper stage, to the Reports tendered by the revenue authorities, court commissioners or such other measurement reports which are produced in the form of evidence.

3] In the aforesaid backdrop, orders impugned passed below Exhibits-79 and 84 are hereby quashed and set aside. Application-Exhibit-79 stands allowed. Appropriate amendment be carried out within a period of four weeks from today, failing which order of rejection of amendment shall govern the field. Since the suit is pending for more than 10 years, hearing of the same is expedited.

4] Parties are at liberty to raise their objection, as has been observed hereinabove.

5] Petition stands allowed accordingly.

(NITIN W. SAMBRE, J.)