

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

42 WRIT PETITION NO.7269 OF 2018

SAMAD KHAN AHMAD KHAN PATHAN
VERSUS
SHAHABUDDIN RASUL KHAN

Mr. Vinayak Sudhakar Bedre, Advocate for the Petitioner.
Mr. A.D. Shinde, Advocate for Respondent No.1.

CORAM : SHARMILA U. DESHMUKH, J.
DATED : FEBRUARY 03, 2023.

PER COURT :

1. Heard. The petition challenges the order dated 08.03.2018 passed in RCS No.158 of 2011 rejecting the petitioner's application for amendment of the plaint. RCS No.158 of 2011 was instituted by the Petitioner for injunction as against the respondents in respect of road passing between the properties of both the parties, on the ground that the road was used by the owners of both the parties from time immemorial.

2. The admitted position is that the defendant filed his written statement and contended that he has carried out the construction on the road. In spite of a specific contention by the defendant in the written statement, the Petitioner did not take any steps to amend the plaint and for seeking relief in respect of

construction which was carried out by the defendant on the suit road, in the year 2017, an application came to be filed for amendment of the plaint seeking removal of the construction which was carried out on the common road by the defendant.

3. Heard learned counsel appearing for the parties.

4. Learned counsel for the Petitioner submits that the amendment is necessary to decide the issue in controversy and all amendments are to be liberally allowed.

5. Per contra, the learned counsel for the respondent submits that in spite of the said construction being brought to the notice of the Petitioner by specific assertion made in the written statement, no steps were taken by the Petitioner for amendment of the plaint till the year 2017 and as such, the relief claimed is clearly barred by limitation.

6. Considering the rival submissions of the parties.

7. RCS No.158 of 2011 was instituted by the plaintiff seeking injunction in respect of common road, in which the defendant by filing his written statement has clearly asserted that he is in possession of the road and there is construction on the said road. A written statement has been filed in the year 2011 itself and till the year 2017, no steps were taken by the Petitioner for amendment of the plaint. In the interregnum, the trial is

commenced and amendment as now proposed is a post trial amendment and it cannot be said that the said fact of construction was not within his knowledge or could not in spite of due diligence, be raised before commencement of the trial. Learned counsel for the Petitioner is unable to demonstrate any such case from the application filed for amendment. In such a position, the clock cannot be set back. The proposed amendment being post trial amendment, without complying with the requirement of the proviso of Order 6 Rule 17 cannot be permitted.

8. For the reasons above, there is no infirmity in the impugned order dated 08.03.2018 below Exh.75 in RCS No.158 of 2011. Writ Petition stands dismissed.

(SHARMILA U. DESHMUKH, J.)