

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8488 OF 2022

Kisan Vishwanath Gerange

.... Petitioner

Versus

Machhindra Vishwanath Gerange
and others

.... Respondents

.....

Mr. Rahul R. Karpe, Advocate for the Petitioner

Mr. Ashraf Patel, Advocate h/f Mr. A.P. Avhad, Advocate for
Respondent No.1

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 21st APRIL, 2023

ORDER :

1. Amendment application filed by the petitioner is rejected by the Trial Court.

2. Suit is filed by the plaintiff for fixation of boundaries of suit properties, and for perpetual injunction and restraining the defendants from interfering the plaintiff's possession over the suit properties. The suit is resisted by the defendants by filing written statement. The Trial Court framed issues on 16/11/2019. Thereafter, application Exhibit-41 filed by the plaintiff for amendment claiming that subsequent to the filing of the suit, the defendants have encroached on the suit

property from another side, and therefore, relief of perpetual injunction and for recovery of possession of encroached portion admeasuring 10 to 15 R is sought by the plaintiff by way of proposed amendment. The application is rejected by the Trial Court. Hence, the present petition.

3. Heard the learned advocate for the petitioner and the learned advocate for respondent No.1. Perused the writ petition memo, annexures thereto and the impugned order.

4. Learned advocate for respondent No.1 strongly opposed the petition contending that the application is belatedly filed, in fact in the suit, relief for removal of encroachment of the defendants from eastern side of the suit property is sought. However, by way of proposed amendment, the plaintiff has sought relief of removal of encroachment as well as possession of the encroached portion from other side of the suit property. This will change the nature of the suit, and therefore, the Trial Court is justified in rejecting the application for amendment.

5. It appears from the record that the plaintiff has claimed that subsequent to the filing of the suit, the defendants have encroached on 10 to 15 R area of the

plaintiff. In view of this subsequent development, the application for amendment is filed. The Trial Court has failed to appreciate the legal position that amendment is to be liberally allowed. The proposed amendment would help the Trial Court to decide the controversy between the parties effectively, and it would also avoid multiplicity of the proceedings. For belatedly filing the application, the plaintiff can be adequately compensated.

6. In view of the aforesaid, the writ petition is allowed in terms of prayer clause (B).

7. Application Exhibit-41 is allowed.

8. The plaintiff shall pay costs of Rs.10,000/- to the defendants in the Trial Court.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane