

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.779 OF 2022

Ganesh Bapurao Patil And Others

...Petitioners

Versus

Yashwant Topa Mahajan And Another

...Respondents

Mr. Ameya Sabnis h/f. Mr. P.B. Gamot, Advocate for the
petitioners.

Mr. A.M. Gholap, Advocate for respondent No. 1.

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 23rd MARCH, 2023

ORDER :

1. By this petition filed under Article 226 and 227 of the Constitution of India, petitioners/plaintiffs challenge the order passed by Joint Civil Judge, Junior Division, Bhusawal, below Exhibit-92 in Regular Civil Suit No. 202/2004, thereby rejecting the application filed by the petitioners under Order VI Rule 17 of the Code of Civil Procedure.

2. Plaintiffs filed suit against respondent No. 1/defendant for declaration, injunction and possession of the suit property mentioned in the plaint. The suit was dismissed and appeal was filed by the plaintiffs. In the appeal, petitioners filed

applications for appointment of court commissioner, amendment in the plaint and for leading additional evidence. The Appellate Court partly allowed the appeal and set aside the judgment and decree passed by the Trial Court and remanded the matter back to the Trial Court, with a direction to appoint court commissioner for carrying out measurement of the suit property to ascertain whether there is any encroachment on the suit property. After getting report of the court commissioner, the Trial Court was directed to decide the suit afresh.

3. After remand, the court commissioner was appointed and he has submitted his report. Pursuant to the report of court commissioner, application Exhibit-92 is filed by the plaintiffs for amendment seeking addition of paragraph No. 10A and 10B and four prayers. After hearing the parties, Trial Court has rejected the said application. Hence, the present petition.

4. Heard the learned advocate for the petitioners and learned advocate for respondent No. 1. Perused the grounds raised in the petition, documents placed on record and the impugned order.

5. It appears from the record that the application is filed by the petitioners after submission of court commissioner's report and after defendant No. 1 filed documents Exhibit- 61 to 72. The proposed amendment in my view does not change the nature of pleadings in the plaint. On the contrary it would avoid multiplicity of proceedings and would be helpful to the Trial Court for effectively adjudicate the dispute between the parties.

6. The Trial Court has ignored the settled legal position that the amendment needs to be liberally allowed. Though, it is observed in the impugned order that the proposed amendment is as per the court commissioner's report, but the Trial Court has erred in holding that the same is going to change the entire pleadings in the suit. Perusal of pleadings in the plaint and the proposed amendment does not indicate so. In fact the proposed amendment appears to be in consonance with the pleadings in the plaint and prayers made therein. Only additional prayer which is proposed is that the plaintiffs be declared owner of the portion of the suit property. Since, it will finally resolve dispute between the parties, the Trial Court ought to have allowed the application. The Appellate Court has already directed the Trial Court to decide the suit afresh. This is all the more reason to

allow the amendment application.

7. There is substance in the contention of learned advocate for respondent No. 1 that there is lack of due diligence on the part of plaintiffs and the application is belatedly filed. For that, the respondent No. 1 can be compensated.

8. In the result, writ petition is allowed in term of prayer clause 'A'.

9. The impugned order dated 30.09.2019 passed below Exhibit-92 by Joint Civil Judge, Junior Division, Bhusawal in Regular Civil Suit No. 202 of 2004, is hereby quashed and set aside.

10. Application Exhibit-92 is allowed. Amendment to be carried out within two weeks from the date of receipt of writ of this order.

11. After the amendment is carried out respondents shall file additional written statement, if any and the Trial Court shall proceed with the suit and decide the same within six months from the date of receipt of writ of this order.

12. The petitioners/plaintiff shall pay cost of Rs. 25,000/- to respondent No. 1/defendant in the Trial Court within four weeks from the date of receipt of writ of this order.

[NITIN B. SURYAWANSHI, J.]