

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8340 OF 2022

Shivaji Malhari Gore and Ors.	...	Petitioners
<i><u>Versus</u></i>		
Subhash Pundalik Nirgude and Ors.	...	Respondents

— —
Mr. Sachin Gite for the Petitioners.
— —

CORAM : SHARMILA U. DESHMUKH, J.

DATE : June 20, 2023.

P. C. :

1. The challenge in the petition is to the order dated 2nd March, 2020, allowing the plaintiff's application for amendment.

2. Heard Mr. Gite, learned counsel for the petitioner.

3. Mr. Gite, submits that the suit being Regular Civil Suit No.38 of 2006 was instituted by the respondent-plaintiff for injunction in the year 2006 and the application for amendment has been made in the year 2019. He has invited the attention of this Court to the proposed amendment, which seeks removal of the encroachment and submits that the proposed amendment changes the nature of the suit. He further points out that in his written

statement, the plea was taken of non-joinder of the necessary party and by the proposed amendment the parties are now sought to be added after a lapse of almost 12 to 13 years.

4. Considered the submissions of the learned counsel for the petitioner. Perused the proceedings in question. Regular Civil Suit No.38 of 2006 was instituted by the respondent-plaintiff for restraining the petitioner-defendant from obstructing the use of way by the respondent.

5. The reason for preferring the application for amendment in the case is that during the pendency of the proceedings, the petitioner had encroached upon the certain portion over which the right of way was sought and thereby obstruct the use of way by the respondent. It is specifically pleaded in the application that the said development being subsequent development the proceedings are required to be amended.

6. It is settled position that the merits of the amendment are not required to be gone into while deciding the application for amendment and the same will have to be established by the plaintiff during the pendency of the proceedings. However, the fact remains that the petitioner claims that the said event is a subsequent event.

The proceedings in question seeks restraining order against the petitioner from obstructing the way of the respondent over the subject road and by the act of encroachment the respondent claims that further obstruction is created.

7. Considering the nature of pleadings, it cannot be said that that the proposed amendment changes the nature of the suit. The suit was seeking injunction against the petitioners from obstructing the right of way of the respondent and the proposed amendment which is a subsequent development adds more ground to establish the respondent's entitlement to the relief of injunction. There is no change in cause of action or relief sought. Being a subsequent development, the said proposed amendment are required to be allowed. As regards the amendment seeking to implead party to the proceedings, it is not disputed that in the written statement, a specific plea has been taken by the petitioner as to non-joinder of the necessary party and, as such, no prejudice would be caused by allowing the proposed amendment particularly when the proposed amendment as regards the joinder of the necessary party is necessitated for the effective adjudication of the controversy in issue.

8. In view of the above, there is no cause for interfering in

the impugned order dated 2nd March, 2022.

9. Writ Petition stands dismissed.

(Sharmila U. Deshmukh, J.)