



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

915 WRIT PETITION NO. 4048 OF 2024

SHIVLAL SHAHU CHAVAN

VERSUS

MOHAMMED UBAID ZIANUL MD ZAINUMUTTQUEEN AND
OTHERS

...

Advocate for the Petitioner : Mr. R. K. Kasat h/f. Mr. S. S. Thombre

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CORAM : ARUN R. PEDNEKER, J.

DATE : 18th APRIL, 2024

PER COURT:

1. Heard.
2. By the impugned order the trial court has allowed the application for amendment of plaint after the dismissal of the interim relief application filed by the plaintiff. The suit originally filed by the plaintiff is simplicitor for injunction, however, by the proposed amendment, the plaintiff has sought declaration of the ownership of the suit property and also prays for possession of the suit property. The proposed amendments as noted in the application at Exhibit-23, are as under-

“3. Proposed Amendment

Claim:- Suit for declaration that, Plaintiff is owner and possessor of the land from, i.e . gut No. 249/1 to the extent of 59 R situated at Village Harsul, Tq. & Dist. Aurangabad.

4. Proposed Amendment:

After the para of 8 new para 8A may be permitted.

8A: That the plaintiff had also been threaded by the defendants earlier on account of which the plaintiffs have lodged a complaint against the defendant at Police station at City chowk. In said enquiry the defendants were admitted as they have no concern with the area of plaintiff as they have encroached some area on the plaintiff land. To ascertain the fact, Court Commission for land measurement may please be granted.

5. Proposed Amendment

In Prayer clause:

D. It may please be declared that Plaintiff is owner and possessor of the land from gut No.249/1 to the extent of 59 R situated at Village Harsul, Tq. & Dist. Aurangabad.

E. It may please be delivered the the possession of the encroached area to plaintiff.”

3. Since, the suit was filed for simplicitor for injunction and the injunction application is resisted by the defendants on the basis of an exchange deed executed by the defendant no.1 and has contended to be in possession of the suit property. The suit simplicitor for injunction would not sustain, as such, the plaintiff has sought the amendment and claimed declaration of ownership of the suit property and recovery of possession. The proposed amendment has been granted by the trial court and I see no error in the same. The defendant will get all opportunity to contest the same and will be able to defend the suit by filing the supplementary written statement.

4. The writ petition stands dismissed.

[ARUN R. PEDNEKER, J.]