



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

44 WRIT PETITION NO. 1087 OF 2023

Navnath Dhondiba Sontakke

VERSUS

Padmineebai Balaji Naik And Another

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Advocate for Petitioner : Mr. S.S. Phatale

Advocate for Respondent 1 : Mr. B.A. Shinde

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CORAM : S. G. CHAPALGAONKAR, J.

Dated : July 10, 2025

ORDER :-

1. Present petition takes exception to the order dated 29.9.2022 passed by learned Civil Judge Junior Division, Manwat, District Parbhani, below Exhibit-45 in Regular Civil Suit No.36 of 2017, thereby rejecting application of petitioner/plaintiff seeking amendment in the plaint.

2. Mr. Phatale, learned counsel appearing for petitioner submits that petitioner has filed R.C.S. No.36 of 2017 seeking decree of perpetual injunction against respondent/defendant in respect of municipal house no.2-1-177 and 2-1-177/1. Defendants appeared in the suit and resisted claim of the petitioner. He would submit that during pendency of above suit, defendant no.1 raised construction over the suit portion belonging to petitioner. Therefore, petitioner was required to file an application seeking amendment below Exhibit-45 so as to bring on record subsequent events and add prayer for removal of such

encroachment. However, Trial Court rejected application giving erroneous reasons.

3. Per contra, Mr. Shinde, learned counsel appearing for respondent no.1 submits that petitioner is seeking inconsistent relief. Earlier suit is filed simplicitor for injunction and now without claiming for declaration of ownership, prayer is sought to be added for removal of encroachment. He would further point out that an application is filed at belated stage when the trial is already commenced. Therefore, in view of proviso under Order VI Rule 17 of the Civil Procedure Code, application cannot be considered. He therefore justified the impugned order.

4. Having considered the submissions advanced, it can be observed that plaintiff has initially instituted suit for relief of perpetual injunction. The suit property is specified in the map attached to the plaint. Now, plaintiff wants to bring on record subsequent events as to encroachment and construction made by the defendant during pendency of the suit. Obviously, when amendment is sought in respect of subsequent events, it cannot be rejected on the ground that application is filed belatedly. On perusal of proposed amendment, it is discernible that there would be no change in the nature of suit nor any prejudice would be caused to defendants. The defendants are at liberty to refute the amended pleading and file written statement to that effect. In such case, proviso under order VI Rule 17 would not impede right of plaintiff to seek appropriate amendment.

5. So far as contentions of Mr. Shinde that petitioner cannot seek relief of removal of encroachment without claim for declaration of ownership. It can be raised at the time of hearing of the suit and that itself cannot be a ground to reject the amendment. It is trite that merit of amendment cannot be considered at the time of considering the application seeking permission for amendment.

6. In that view of the matter, impugned order cannot be sustained in law. Hence, writ petition succeeds and allowed in terms of prayer clause 'B' and **disposed of**.

(S. G. CHAPALGAONKAR)
Judge

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