



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11411 OF 2022**

Govind Ganapati Powar ... Petitioner
versus
Shivaji Bapu Jondhale and Anr. ... Respondents

Mr. Vikrant Desai i/by Mr. Suresh M. Kamble, for Petitioner.
Mr. Dilip Shinde, for Respondents.

CORAM: N.J.JAMADAR, J.

DATE : 29 JANUARY 2025

P.C.

1. Heard the learned Counsel for the parties.
2. The challenge in this Petition is to an order dated 16 December 2021 passed by the learned Civil Judge, Jr. Division, Peth-Vadgaon, whereby an application (Exhibit 47), preferred by the Petitioner/Plaintiff, to amend the plaint in Regular Civil Suit No.1 of 2016 came to be rejected.
3. The Petitioner instituted a suit for perpetual injunction asserting that on 1 January 2016, the Defendants started digging the suit property, and, thereby caused obstruction to the possession and enjoyment of the Plaintiff over the suit property.
4. The Defendants appeared and filed written statement along with a Counter Claim and contended that, in fact, the Plaintiff had committed encroachment over a portion of the property of the Defendants and, thus, a decree for removal of encroachment be passed against the Plaintiff. To the

said Counter Claim, the Plaintiff has filed written statement (page 54). Simultaneously, in the suit, an application for amendment in the plaint came to be filed.

5. By the impugned order, the learned Civil Judge was persuaded to reject the application observing that the document which was referred to in the written statement and counter claim of the Defendants, was executed in the year 2002. There is no whisper about the same in the plaint. Thus, there was no due diligence on the part of the Plaintiff in seeking the amendment in the plaint.

6. Learned Counsel for the Petitioner submitted that the proposed amendment in the plaint would not change the nature of the suit. It is necessary to decide the real question in controversy between the parties.

7. The material on record indicates that the very averments, which are sought to be pleaded by way of amendment, form part of the written statement of the Plaintiff to the counter claim filed on behalf of the Defendants. In fact, after the Defendants raised the contention that there was an agreement between the parties dated 10 September 2003 and on the strength of the said agreement, the Defendants sought a decree for removal of encroachment, the Plaintiff preferred application to amend the plaint. Since the facts which the Plaintiff propose to introduce in the plaint, by way of amendment, already form part of the pleadings in the form of written

statement of the Plaintiff to the counter claim, all the questions in controversy between the parties can be adjudicated on the basis of available pleadings on record. The proposed amendment has the potential to deprive the Defendants of the advantage of the facts which they first asserted in the counter claim and the Plaintiff chose not to assert. Even otherwise, the proposed amendment seems superfluous.

8. Thus, the impugned order does not warrant any interference.
9. The Writ Petition stands dismissed.

(N.J.JAMADAR, J.)