

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7466 OF 2024

Abasaheb Jaywantrao Shitole

...Petitioner

Versus

Mohan Jaywantrao Shitole

...Respondent

Mr. Abhishek R. Avachat a/w. Mr. Siddhant H. Deshpande for the Petitioner.
Mr. Dnyaneshwar Deshmukh a/w Mr. Rutwik Deshmukh for the Respondent.

CORAM : M. M. SATHAYE, J.

DATED : 20th MARCH 2025

P.C.:

1. Heard learned Counsel for the parties. The Petitioner is the Defendant and the Respondent is the Plaintiff in Regular Civil Suit No. 143 of 2015, which is pending.

2. The Petitioner is challenging the order dated 11/01/2023 passed below Exh. 92 by 3rd Jt. Civil Judge, Junior Division, Pimpri in the said Suit. By the impugned order the Petitioner's Application for amendment of the counter-claim is rejected.

3. Learned Counsel for the Petitioner has invited this Court's attention to the amendment application which prays for substitution of the 'property nos. 11.875 and 11.517' as mentioned in paragraph no. 1 of the counter-claim with 'property nos. 80 and 81'.

4. Learned Counsel for the Respondent, inviting the Court's attention to the reply filed by the Respondent/Plaintiff contends that according to the

Respondent, he is the owner of the property no. 80 and such substitution would prejudicially affect the claim of the Respondent about the said property no. 80. He submits that under the guise of the proposed amendment, the Petitioner can not be permitted to alter suit premises.

5. Learned Counsel for the Petitioner, on instructions, states that by the proposed amendment, property nos. 80 and 81 will be added and not substituted and the subject matter of the suit as well as counter-claim remains the same. Statement is accepted. It is undisputed that the suit property is an open space between 2 properties admeasuring approximately 25' x 40' having old latrine/s, bathroom, two old rooms and area admeasuring 14' x 3½' abutting the bathroom and old customary lane (*vahivaticha bol*) and space of Ota about 4 foot and 3 foot open space, as described in the plaint-paragraph no. 1.

6. Considering the aforesaid statement made by learned Counsel for the Petitioner, it is therefore clear that by the proposed amendment the suit property in the suit as well as counter-claim is not being changed.

7. In that view of the matter, the observations in the impugned order that the proposed amendment may change the suit property, is taken care of between the parties.

8. Considering the aforesaid, this petition is disposed of by passing following order :

A) The impugned order is quashed and set aside.

B) Petitioner is allowed to add property nos. 80 and 81 in para 1 of

the counter-claim, subject to what is recorded above and on the basis of the statement made by the Petitioner. Necessary amendment be carried out within a period of 3 weeks from today.

C) Needless to observe that the Respondent will be at liberty to file additional written statement, only to the extent of amendment involved and considering the statement made by the Petitioner. The Respondent is also at liberty to lead additional evidence including examining himself again.

. All concerned to act on duly authenticated or digitally signed copy of this order.

(M. M. SATHAYE, J.)