



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION No.2066 OF 2025

1. Dilip s/o. Uttamrao Chhabile,
Aged 65 years, Occupation : Agriculture.
2. Ravindra s/o. Dilip Chhabile,
Aged 36 years, Occupation : Doctor.
3. Shubham s/o. Dilip Chhabile,
Aged 30 years, Occupation : Student.

All above mentioned petitioners are
R/o. Teacher Colony, Mehkar,
Tq. Mehkar, Distt. Buldhana. : PETITIONERS

...VERSUS...

1. Pandharinath s/o. Narayan Deokar,
Aged 68 years, Occupation : Agriculture.
2. Sakharam s/o. Narayan Deokar,
Aged 77 years, Occupation : Agriculture.
3. Deorao s/o. Narayan Deokar,
Aged 72 years, Occupation : Agriculture.
4. Kisan s/o. Narayan Deokar,
Aged 86 years, Occupation : Agriculture.
5. Waman s/o. Narayan Deokar,
Aged 82 years, Occupation : Agriculture.

All respondents above are R/o.
Nemtapur, At Post Kalyana,
Tq. Mehkar, Distt. Buldhana,
Maharashtra – 443 301. : RESPONDENTS

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Mrs. R.G. Bajaj, Advocate for Petitioners.
Mr. V.K. Paliwal, Advocate for Respondents.

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CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : 11th AUGUST, 2025.

ORAL JUDGMENT :

1. Heard. Rule. Rule made returnable forthwith. Heard finally with consent of learned counsel appearing for the parties.

2. The petitioners have challenged order dated 13.1.2025 passed by the trial Court rejecting their application under Order VI Rule 17 of the Code of Civil Procedure seeking amendment to the plaint.

3. Mrs. R.G. Bajaj, learned counsel for petitioners submitted that the petitioners are the original plaintiffs who had filed suit for removal of encroachment and possession by contending that the defendants have committed encroachment over the suit property bearing Gat No.6, situated at Mouza Erondali, Taluka Mehkar, District Buldana. It is pointed out that in the plaint the plaintiffs have mentioned the details of the suit property and even the total boundaries of property owned by the plaintiff Nos.1 to 3. The suit came to be dismissed by judgment and decree dated 28.08.2014. The plaintiffs/petitioners then challenged the decree by Regular Civil Appeal No.97/2019, which came to be allowed and the matter was remanded to the trial Court. It is submitted that while remanding the suit the Appellate Court issued specific

directions for appointment of Court Commissioner, for fresh joint measurement, fresh demarcation of boundaries of the properties and framing of additional issues and recording of additional evidence, if necessary, as mentioned in the operative part of the order passed by the Appellate Court.

4. Learned counsel for petitioner submitted that in view of the remand of the suit to decide the issue of encroachment on the basis of fresh measurement and demarcation of boundaries, the plaintiffs filed application under Order VI Rule 17 of the Civil Procedure Code for amendment seeking to incorporate the boundaries of the properties owned by the plaintiff Nos.1 to 3. It is submitted that by this amendment the details of the boundaries are only sought to be mentioned and since there is no addition of any separate cause of action or prayer clause, the mention of boundaries by way of amendment was necessary for deciding the real controversy involved in the suit. The application was opposed by the defendants on the ground that the amendment was filed belatedly and it sought to introduce new factual aspects. The trial Court rejected the application by order dated 13.1.2025, by observing that the boundaries could have been mentioned in the original plaint and the amendment if allowed, would violate the rights of the defendants.

5. Learned counsel for the petitioners submitted that the proposed amendment is an attempt to only mention boundaries of the suit property and in view of the elaborate directions by the Appellate Court while remanding the civil suit it became necessary for the plaintiffs to state specifically the boundaries of the suit properties so that the actual controversy involved in the suit could be decided. In support of her submissions she relied upon the judgment of the Hon'ble Supreme Court in the matter of **Dinesh Goyal alias Pappu vs. Suman Agarwal (Bindal) and others**, reported in **2024 SCC OnLine SC 2615**. While advertent attention of this Court to this judgement it is submitted that by way of proposed amendment the plaintiffs are intending to rectify the absence of material particulars in the plaint and in view of the position of law, the same ought to have been allowed.

6. Per contra, Mr. V.K. Paliwal, learned counsel for the respondents strongly opposed the petition. He vehemently submitted that by way of amendment the plaintiffs are introducing new facts which could have been stated in the plaint and, therefore, it is submitted that the boundaries will change the area of the suit property and the amendment cannot be permitted. He also submitted that the Appellate Court had remanded suit only for the purpose of fresh joint measurement through Court Commissioner

and the addition of particulars in the plaint will change the nature of the suit.

7. While considering rival contentions, it has to be seen that the Appellate Court had remanded the suit by specifically directing the trial Court to decide the suit after fresh joint measurement through Court Commissioner and the following directions amongst others are mentioned in the judgment of the Appellate Court.

“03. Case is remanded back to the learned C.J.J.D. Mehkar for carrying out fresh joint measurement of the suit properties and property of the defendants by appointing Court Commissioner i.e. competent Government official from the office of T.I.L.R. having jurisdiction over the suit properties.

05. The plaintiffs are directed to file application for carrying out fresh measurement within two weeks from the date of their appearance before learned C.J.J.D. Mehkar and pay the charges of measurement fees of the Court Commissioner as per rules.

06. The learned C.J.J.D. Mehkar shall direct the Court Commissioner to carry out the measurement as per Order 26 Rule 9 of the Code of Civil Procedure, after serving notices on both the parties and neighboring field owners if any, by obtaining title deeds, 7/12 extracts relating to the properties of both the parties, relevant records in respect of road which has gone through and adjacent to the fields of both the parties and shall demarcate the boundaries of their properties by noting down actual measurement in the joint measurement map and by noting encroachment, if any.

10. The learned C.J.J.D. Mehkar is directed to decide the matter afresh

by considering all relevant record, report, map of joint measurement submitted by the Court Commissioner and objection if any by framing additional issues and recording evidence in addition to oral and documentary evidence which is already on record.”

8. In view of specific directions issued by the Appellate Court while remanding the civil suit it is clear that fresh measurements were directed to be conducted by the Court Commissioner and it is specifically observed that the Commissioner shall demarcate the boundaries of their properties by noting down actual measurement in the joint measurement map and by noting encroachment if any. It is also directed that the trial Court shall decide the matter afresh by considering all relevant record, report, map of joint measurement submitted by the Court Commissioner and objections if any, by framing additional issues and recording evidence in addition to oral and documentary evidence which is already on record. Thus, it becomes clear that the mention of boundaries in the suit property became very vital for deciding the real controversy involved in the suit. In view of this, if the proposed amendment is seen, the plaintiffs are proposing to mention the boundaries of their respective properties and no other amendment in the nature of changing the cause of action or introducing new prayer is made.

9. As regards the contentions raised by the respondents that mentioning of new boundaries cannot be permitted as it may amount to change in the nature of the dispute. It is relevant to note that the plaintiff has earlier stated the total boundaries in the plaint and now by way of amendment the details of boundaries of each of the properties are only specified. It has to be seen that in view of the specific directions of the Appellate Court mention of specific boundaries will assist the Court to arrive at proper conclusion with respect to alleged encroachment. The objection of the respondent that in the garb of mentioning boundaries an attempt is made to introduce new facts, cannot be sustained since the defendants are entitled for conducting cross-examination after the joint measurement is carried out by the Commissioner. It is profitable to refer to the position of law as laid down in the judgment of the Hon'ble Supreme Court in *Dinesh Goyal* (supra), stating general principles, relevant part of which from para 11 is reproduced below :

“(iv) Some general principles to be kept in mind are –
(I) The court should avoid a hyper-technical approach; ordinarily be liberal, especially when the opposite party can be compensated by costs.
(II) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint or introduce an additional or a new approach.

(III) The amendment should not change the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint.”

10. On consideration of submissions canvassed by both the parties, I am of the considered view that mention of boundaries by way of amendment does not amount to change in nature of the suit much less introduction of new cause of action or new reliefs. The clarification of boundaries in the plaint will assist the Court in resolving the real controversy involved in the suit. As such, the reliance placed on the judgment in the matter of *Dinesh Goyal alias Pappu* (supra) appears to be appropriate.

11. In view of the factual and legal aspects, the writ petition is allowed. The impugned order deserves to be quashed and set aside. The order dated 13.01.2025 passed by the Civil Judge, Junior Division, Mehkar on Application at Exhibit-93 is quashed and set aside. The application filed by the plaintiffs seeking amendment at Exhibit-93 is allowed.

12. No order as to costs.

(PRAFULLA S. KHUBALKAR. J.)