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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 1435 OF 2015

Bhujangrao s/o Babasaheb Dukare & ors.PETITIONERS

VERSUS

Baliram s/o Bapurao Dukare & anr.RESPONDENTS

Mr V. D. Salunke, Advocate for petitioners;
Mr D.R. Markad, Advocate holding for Mr N.K. Kakade, Advocate for
respondents

CORAM : N.W. SAMBRE, J.

DATE : 5th December, 2015

ORAL ORDER :

By the present petition, the petitioners-original plaintiffs have challenged the legality and validity of the order dated 2nd January, 2015, passed by Civil Judge Junior Division, Paithan, below Exh.64, in Regular Civil Suit No.125 of 2003, thereby rejecting the prayer for amendment of plaint.

2. The petitioners – plaintiffs have filed Regular Civil Suit No.125 of 2003, seeking a decree for declaration and injunction. In the said suit, petitioners had moved application Exh.37, seeking amendment of plaint for impleading one Amol as party defendant. The said application came to be rejected by an order dated 17th July, 2013, passed by the learned Trial Court, which order was confirmed by this Court in Writ Petition No.9719 of 2013 on 25th August, 2014. The petitioners again have moved application

(2)

Exh.64, seeking the similar amendment, which came to be rejected by the Trial Court on 2nd January, 2015. Thus, the present petition.

3. Learned Counsel appearing on behalf of the petitioners, while questioning the impugned order, would urge that since the amendment sought for is necessary for adjudicating the issue raised, it ought to have been granted by the Trial Court. At the relevant time, Amol was not impleaded as party defendant as he was minor. He would then urge that in case amendment is not granted, the same might result in filing of a fresh suit against Amol, which will multiply the litigation and as such, prayed for allowing the petition.

4. Learned Counsel appearing on behalf of the respondents would urge that there was no cause alleged against Amol in the matter and he is sought to be added only as a proforma party. According to him, once the application with the similar relief was rejected and approved in Writ Petition No.9519 of 2013, it is not open for the petitioners to move similar application at this stage. Thus, he prayed for dismissal of the petition.

5. On perusal of the record, it is noticed that the similar prayer was made by the petitioners for impleading Amol as party defendant to the suit, which came to be rejected on 17th July, 2013, which order was upheld by this Court in Writ Petition No.9719 of 2013, on 25th August, 2014.

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6. The only change in the circumstances, which promoted the petitioners to file the application for amendment is that Amol has attained majority and as such sought his impleadment. In my opinion, the same cannot be a ground to grant the application, as the principle of *res judicata* will apply in the matter, as the issue is already dealt with and rejected against the petitioners.

7. I do not see any reason for interfering in the impugned order, as the reasons furnished by the learned Trial Court, appear to be germane to the cause. Writ Petition thus fails and stands dismissed, with no order as to costs.

(N.W. SAMBRE, J.)

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