

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

Office Memoranda of appearance, Court's orders or directions and Registrar's orders.	Notes, of Court's orders or Registrar's	Office Coram,	Court's or Judge's orders.
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WRIT PETITION NO. 2124 OF 2015

NAMDEO KISHAN MORE AND ANOTHER
VERSUS
RAJENDRA KISHAN MORE

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Advocate for Petitioners : Mr. Dawalkar P.P., Advocate h/f
Mrs. Deshmukh Charuta Sunil.
Advocate for Respondent: Mr. S. N. Boiwar, Advocate h/f
Mr. S. R. Deshpande.

CORAM: N. W. SAMBRE, J.
DATED: 20th APRIL, 2015.

PER COURT:

1. The petition is by the defendant in R.C.S. No.441 of 2010 which is for injunction in relation to property Gat No.348.

2. An application for amendment came to be moved in the said suit at the stage when plaintiff has tendered his examination in chief vide application Exhibit-47. The

said application for amendment was objected by the present petitioner/ defendant. However, trial Court allowed the same by an order dated 4th December, 2014. As such present petition.

3. According to learned counsel for the petitioner, defendant, by grant of amendment, the pleading which was not part of the suit, was permitted to be inserted which changes the nature of claim. He would urge that the pleadings which are sought to be inserted were well within the knowledge of the plaintiff and plaintiff was negligent in prosecuting the suit. In support of his contentions he has relied upon the judgment of this Court in the matter of “**Gangabai Baban Kadam and another V/s Dr. Vidya Vijay Joshi**” ¹ so as to canvass that before granting amendment the Court must satisfy the requirement of Order 6 Rule 17 C.P.C. and the fact that the trial in the suit has commenced should have been taken into account.

4. Learned counsel for the respondent opposed the

¹ 2015 (2) Mh.L.J. 444

claim of the applicant on the ground that even if the trial in the suit has commenced he would urge that the petitioner defendant will get appropriate opportunity to meet the claim that is granted by way of amendment.

5. Having considered the rival contentions of the parties, this Court noticed that the learned trial Court has granted the amendment subject to payment of costs. Trial Court was alive of the stage of the suit and the claim which is sought to be inserted by way of amendment. It is not in dispute that the details of Gat No.348 which are sought to be inserted by way of amendment are clarificatory in nature for the earlier stand taken in the plaint. In my opinion it does not change nature of the suit.

6. The amendment granted by the trial Court was necessary in the interest of justice and for adjudicating the issue which was sought to be canvassed by the plaintiff. In view of above, in my opinion, no case is made out for interference. Petition fails and stands dismissed.

7. However, the order of grant of amendment is modified to the extent of enhancing the costs Rs.500/- to Rs.3,500/- to be paid by the plaintiff within three weeks from today.

[N. W. SAMBRE, J.]

Dt.20/04/2015
ans/2124