

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

WRIT PETITION NO. 6208 OF 2015

Bapurao s/o Manikrao Sule and anr.	..	Petitioners
versus		
Laxmibai @ Radhabai w/o Manikrao Sule		
and others	..	Respondents

Mr. Pravin N. Kalani, Advocate for petitioners
Mr. P. S. Paranjape, Advocate for respondents

CORAM : SUNIL P. DESHMUKH, J.
12TH OCTOBER, 2015

ORDER:

1. Heard learned counsel for parties.
2. Perusal of impugned order dated 02-03-2015 passed by 2nd Joint Civil Judge, Junior Division, Parbhani, rejecting application Exhibit-105 filed by petitioners-original plaintiffs seeking amendments to the plaint in regular civil suit no. 252 of 2008 shows that rejection is for want of verification pursuant to Order VI, rule 15 of the Code of Civil Procedure, 1908 as well as it being moved after trial had commenced. It also appears that the trial court has considered that grant of amendments would convert the suit into another different and inconsistent of nature.
3. The petitioners appear to have prayed for relief of injunction simplicitor referring to their right through their father.

4. Learned counsel for petitioners has taken me through the complaint and pleadings of the defendants in the written statement and has contended that as a matter of fact, the situation emerges that the claims of the petitioners with regard to origin of their right stands admitted. In such a case what is implicit is being made explicit and on technical reasons, petitioners may not be non-suited.

5. Learned counsel for respondents, however, has a different version, stating that the order impugned shall not be found fault with. If amendments are to take place, those should be part of pleadings with due verification as verification is a must, however, application for amendments has been moved simply by advocate for the plaintiffs. It is being further contended that even evidence of defendants is over. In such a case, the order impugned does not require interference having regard to amended provisions of Order VI, of the Code of Civil Procedure.

6. In the circumstances, it appears that the trial court will have to scrutinize the pleadings and then come to a definitive conclusion about character of the amendments being sought. As far as verification is concerned, the defect appears to be rectifiable. Petitioners, therefore, deserve a chance for rectifying defect as well as opportunity to parties to properly address the matter.

7. In view of the same, impugned order dated 02-03-2015 passed by 2nd Joint Civil Judge, Junior Division, Parbhani, rejecting application Exhibit-105 in special civil suit no. 252 of 2008 is set aside. Parties to address afresh with opportunity to petitioners to cure deficiency with regard to verification.

8. Writ petition accordingly stands disposed of.

SUNIL P. DESHMUKH, J.

pnd