

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

WRIT PETITION NO. 6941 OF 2014

1. Sarfaraz s/o Fayyaz Sayyad,
Age: 25 years, Occu: Agri.,
2. Fayyaz s/o Dadamiya Sayyad,
Age: 55 years, Occu: Agri.,
3. Halimabee w/o Fayyaz Sayyad,
Age: 50 years, Occu: H.H. & Agri.,

All R/o. Khadgaon Ring Road, Latur,
Tq. Dist. Latur.

...Petitioners

versus

1. Padminbai w/o Devidas Shinde,
Age: 50 years, Occu: H. H. & Agri.,
2. Ramdas s/o Devidas Shinde,
Age: 25 years, Occu: Agri.,
3. Nagorao s/o Ganpatrao Deshmukh,
Age: 60 years, Occu: Agri.,
4. Dattu s/o Sambhaji Bhise,
Age: 60 years, Occu: Agri.,
5. Ramraje s/o Dattu Bhise,
Age: 35 years, Occu: Agri.,
6. Gopinath s/o Vishwanath Kalbande,
Age: 50 years, Occu: Agri.,
7. Biroba s/o Vishwanath Kalbande,
Age: 45 years, Occu: Agri.,
8. Mahonrao s/o Ganpatrao Deshmukh,
Age: 55 years, Occu: Agri.,

All R/o Yeli Tq. And Dist. Latur.

...Respondents

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Mr. N. D. Kendre, Advocate for petitioners.

Mr. D. P. Deshpande, Advocate for respondent Nos. 1 and 2.

Mr. A. V. Rakh, Advocate h/f Mr. S. G. Jadhawar, Advocate for respondents Nos. 3 to 8.

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CORAM : N.W. SAMBRE, J.

DATE : 11TH MARCH, 2015

ORAL ORDER :

. The defendants to the suit for perpetual injunction bearing Regular Civil Suit No. 267 of 2010, have questioned the legality and validity of the order dated 17/07/2014 passed by 2nd Joint Civil Judge, Junior Division, Latur below Exhibit-117 an application moved under the provisions of Order 6 Rule 17 of the Code of Civil Procedure for amendment of the plaint.

2. Learned Counsel for the petitioners would urge that if the amendment as sought is granted, according to him, same will change the entire nature of the suit, as earlier, suit was for perpetual injunction, in which issues were framed on 03/02/2012. He would further urge that, what is sought to be incorporated by respondents-plaintiffs by way of amendment, is mandatory injunction directing the defendants-petitioners to clear newly created road and to restore the said area to its original position. According to him, the trial in the suit has also commenced.

3. He has also placed reliance upon the judgment of this Court in the matter of **Prakash Ratanlal @ Ratansa Kasari vs. Bhika s/o Banda Dhage and anr.** reported in **2010(1) Mh.L.J 810** particularly observations made in paragraphs-10 and 11, which has laid down the law that in case, if the amendment changes the nature of the suit, such amendment need not be granted, particularly having regard to the provisions of Order 6 Rule 17 of Code of Civil Procedure, if the trial in the suit has commenced.

4. Mr. Deshpande, learned Counsel for the respondents-plaintiffs would urge that the amendment is based on subsequent developments of filing the written statement by the defendants. He would further urge that in the amendment application, it is specifically mentioned that the amendment is based on road created by the defendants in the suit property after 03/01/2012. He would further urge that the trial in the suit has yet to be began as only issues were framed, however, recording of evidence has not commenced.

5. Having regard to the rival contentions of the parties, it is noticed that the learned trial Court has passed an order granting amendment having regard to the subsequent developments during the pendency of the suit and after filing of the written statement.

Once the trial Court has exercised its discretion, particularly having to the facts mentioned therein, unless substantial case of prejudice is demonstrated before this Court, this Court is required to slow in exercising the jurisdiction.

6. From the facts of the case on record, it is admitted on record that amendment which is sought to be incorporated is based on subsequent developments. It is also not in dispute that the trial in the suit is yet to commence i.e. recording of evidence is yet to began. In that view of the matter, in my opinion, learned trial Court has rightly exercised discretion vested in it.

7. Though the law cited by learned Counsel for the petitioners supports the contention that if the amendment as sought changes the very nature of the suit, should not be granted, however, it is required to be noted that there is no blanket injunction in granting such amendment, provided amendment sought is permissible in the factual scenario i.e. based on subsequent developments and such issue goes to the root of the matter.

8. As such, reliance placed by learned Counsel for the petitioners in the judgment of this Court in the matter of **Prakash Ratanlal @ Ratansa Kasari** (supra) is misplaced in the

light of the facts of present case. As such, petition fails, same stands rejected.

[N.W. SAMBRE, J.]

Tupe/11.03.15