

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

WRIT PETITION NO. 8720 OF 2014

1. Sau. Sushila W/o Shrimanth Unde,
Age: 55 years, Occu: Agri.,
R/o Bodhnapuri, Tq. Ghansawangi,
Dist. Jalna.
2. Sau. Mangalabai W/o Narayan Aher,
Age: 45 years, Occu: Agri.,
R/o Ramgavhan, Tq. Ghansawangi,
Dist. Jalna.
3. Sau. Indubai W/o Laxman Surase,
Age: 40 years, Occu: Agri.,
R/o Niklas, Tq. Badnapur,
Dist. Jalna.

(Petitioner No. 1 to 3 through
their G.P.A. Mr. Rameshwar
S/o Nanansaheb Dudhe, Age: 40 yrs,
Occu: Agri., R/o Sonwadi(Bk)
Tq. Paithan, Dist. Aurangabad.

...Petitioners

versus

1. Karbhari S/o Kaduji Dudhe,
Age: 50 years, Occu: Agri.,
R/o Sonawadi (Khurd),
Tq. Paithan, Dist. Aurangabad.
2. Sadashiv S/o Kaduji Dhudhe,
Age: 45 years, Occu: Agri.,
R/o Sonawadi (Khurd),
Tq. Paithan, Dist. Aurangabad.

...Respondents

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Mr. V. B. Garud, Advocate for petitioners.
Mr. K. F. Shingare, Advocate for respondents.
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CORAM : N.W. SAMBRE, J.

DATE : 24TH MARCH, 2015

ORAL ORDER :

. The petitioners-plaintiffs in Regular Civil Suit No. 179 of 2014, for declaration and permanent injunction, moved an application Exhibit-19 under Order 6 Rule 17 of Code of Civil Procedure for amendment of the plaint, which application came to be partly allowed by the Civil Judge, Junior Division, Paithan by an order dated 22/07/2014. The said Court has refused the permission to the petitioners-plaintiffs to carry out corrections qua measurement in the prayer clause-1 of the plaint. As such, present petition.

2. Mr. Garud, learned Counsel for the petitioners would urge that the amendment that is sought to be incorporated in the plaint goes to the root of the matter and as the suit is at its initial stage i.e., the Court has ordered notice on application for grant of temporary injunction, the trial in the suit has yet to commence. According to him, no prejudice will be caused to the respondents-defendants if the application is allowed. He submits that the petitioners can put some conditions while granting prayer for amendment in the prayer clause.

3. Learned Counsel for respondents while objecting the claim made for amendment would urge that the petitioners-plaintiffs

were not diligent while preferring the suit. According to him, the amendment in the prayer clause if granted, same shall change the nature of the entire suit.

4. In addition to above, he has invited my attention to the mutation entries which are placed at Page-20 of the petition, so as to canvass that the corrections as sought by way of amendment are not justified.

5. Having considered the contentions raised by the respective parties, it is required to be noted that the suit is at initial stage as the issues are not framed in the said suit. Learned trial Court while dealing with the application Exhibit-19 for amendment has allowed the same in part, however denied the prayer for amendment to the extent of amendment to the prayer clause, as according to learned trial Court, the same causes the prejudice to the defendants. The trial Court has dealt with the said aspect as regards the amendment to the prayer clause, having regard to the mutation entries and consolidation scheme. In my opinion, in absence of opportunity to lead the evidence to that effect, it will be inappropriate to consider and reject the said prayer on merit. Even otherwise, what is sought to be incorporated by way of amendment to the prayer clause is, change in the area and the defendants will not be taken by

surprise, if the said amendment is granted, as area is sought to be corrected by way of amendment.

6. The said claim made in the plaint can be contested by the defendants on its own merits.

7. In view thereof, it will be appropriate to allow the present petition by granting application Exhibit-19 in toto. The writ petition stands allowed. Application Exhibit-19 stands granted. Appropriate amendment be carried out within period of four weeks from today. The petitioners to pay costs of Rs.2000/- (Rs. Two thousand only) to the defendants. Amount of cost be deposited within period of four weeks from today before the trial Court. The defendants shall be entitled to withdraw the same. The writ petition stands allowed in above terms.

[N.W. SAMBRE, J.]