

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9742 OF 2013

1) Ramdas s/o Venkatrao Hake,
Age: 56 years, Occu. Agril.,
R/o : Hanuman Tekdi,
Jai Malhar House, Ahemadupr,
Tq. Ahemadupr, Dist. Latur

2) Devidas s/o Venkatrao Hake,
Age: 55 years, Occu. Agril.,
R/o : Warwanti, Tq. Ahemadupr,
Dist. Latur

...PETITIONERS
(Orig. Deft. No.3 & 4)

VERSUS

1) Kusumbai w/o Deorao Naik,
Age: 49 years, Occu. Household
& Agril.
R/o : Thodga Road, Ahemadupr,
Tq. Ahemadupr, Dist. Latur

2) Janabai w/o Ramrao Dhulgande,
Age: 51 years, Occu. Household
& Agril.,
R/o : Gaundgao, Tq. Loha,
Dist. Nanded

3) The State of Maharashtra
Through Collector, Nanded

4) Special Land Acquisition Officer,
Special Land Acquisition Office,
Nanded

...RESPONDENTS
(Res.No. Orig. Plaintiff;
Res. No.2 to 4 Orig.
Deft. No.1,2 & 5)

Mr V.P. Savant, Advocate for petitioners;
Mr V.B. Dhage, Advocate for respondent no.1;
Mrs B.B. Gunjal, A.G.P. for respondents no.3 & 4

CORAM : N.W. SAMBRE, J.

DATE : 20th January, 2015

ORAL ORDER

By the present writ petition, the petitioners/original defendants no.3 and 4, challenge the legality and correctness of the order dated 2nd July, 2013, passed by Civil Judge Senior Division, Kandhar, below Exh.30, in Regular Civil Suit No.173 of 2012, whereby prayer of respondent no.1/plaintiff for amendment of plaint under Order VI, Rule 17 of the Code of Civil Procedure, came to be allowed, subject to payment of costs of Rs.500/-.

2. Respondent no.1 herein has instituted Regular Civil Suit No.173 of 2012 seeking a decree for declaration of right, title and interest to the extent of 1/4th share in the suit properties and also a declaration that she is entitled to the amount of compensation, to the extent of 1/4th share, for acquisition of the suit land under the Land Acquisition Act.

3. After the written statement came to be filed by the present petitioners, respondent no.1/plaintiff moved an application Exh.30, seeking certain amendments to the plaint. The said application came to be allowed by the order dated 2nd July, 2013, which is challenged in the instant petition.

4. Learned Counsel appearing on behalf of the petitioners/defendants no.3 and 4 submits that the application Exh.30 has been wrongly and illegally allowed by the Court below, as according to him, the requirement of Order VI, Rule 17 of the Code of Civil Procedure is not satisfied. He submits that the property, in relation to which the amendment was sought, is self-acquired property of the petitioners and the said issue is not looked into by the learned Trial Court. In addition to above, he submits that the plaintiff is not entitled to claim part of compensation amount paid, in view of the provisions of the Land Acquisition Act as the plaintiff has kept herself away from the same by not participating in acquisition proceedings. He further urged that it should have been ascertained, as to whether part of compensation which is claimed by the plaintiff is paid to defendants no.3 and 4 and then only the amendment should have been allowed. He further submits that the quantum of amount out of the compensation paid under the Land Acquisition Act, which is sought to be claimed in the plaint is hypothetical and imaginary. According to him, the application for amendment was also not signed by the plaintiff and as such the same ought to have been rejected.

5. While countering the above referred submissions, learned Counsel appearing on behalf of respondent no.1/plaintiff submits that the merits of the issues sought to be incorporated by way of amendment is not required to be examined by the Court while considering the prayer for amendment.

He urged that the amendment shows that only amount of Rs.9,86,443/-, i.e. 1/4th share is claimed by the plaintiff in total compensation of Rs.39,45,775/- received by defendant no.3. By allowing the amendment, the petitioners/defendants are not taken by surprise and they will get every opportunity to defend their case.

6. Upon hearing the learned Counsel for the parties and on perusing the impugned order, it is noticed that for the reasons recorded in the impugned order, the Trial Court has allowed amendment and was alive to the considerations which are required to be weighed while granting the amendment under Order VI, Rule 17 of the Code of Civil Procedure as can be inferred from the language employed in the order impugned.

7. It is also required to be taken note of the fact that whether the claim put-forth by virtue of amendment is correct or not, can be gone into by the Court below at the time of deciding the suit in question on merit, and at the time of deciding the application for amendment the same is hardly of any significance or considerations.

8. As far as the next contention of the petitioners, that the amendment was not signed by the plaintiff is concerned, the learned Trial Court has looked into the same and has noticed that the amendment is

allowed only after the Court attested the said application, which amounts to verification of the said application.

9. In that view of the matter, no illegality or irregularity is noticed in the impugned order. Thus, the instant writ petition stands rejected.

10. It is required to be noted that the Trial Court has imposed costs of Rs.500/- on the plaintiff while allowing the application for amendment. In the facts and circumstances of the instant case, in my opinion, the said costs is inadequate and it will be appropriate to increase the same from Rs.500 to Rs.2,000/-. The amount of costs be deposited by the plaintiff within a period of four weeks from today. The petitioners/defendants no.2 and 3 will be entitled to withdraw the same.

(N.W. SAMBRE, J.)

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