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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10342 OF 2014

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| 1. | Laxmikant s/o Vithalrao Pandav
Age - 54 years, Occ - Agriculture
R/o Jeba Pimpri, Taluka and District - Beed | PETITIONER |
| 2. | Fakira s/o Babu Kokate,
Age - 54 years, Occ - Agriculture
R/o Jeba Pimpri, Taluka and District - Beed | |
| 3. | Atmaram s/o Babu Kokate,
Age - 59 years, Occ - Agriculture
R/o Jeba Pimpri, Taluka and District - Beed | |
| 4. | Rajendra s/o Prabhu Homne,
Age - 44 years, Occ - Agriculture
R/o Chandegaon, Taluka and District - Beed | |
| 5. | Vasant s/o Prabhu Homne,
Age - 49 years, Occ - Agriculture
R/o Chandegaon, Taluka and District - Beed | |

VERSUS

Baliram s/o Dhondiba Yadav Age - 59 years, Occ - Agriculture R/o Jeba Pimpri, Taluka and District - Beed	RESPONDENT
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Mr. G. K. Thigale (Naik) Advocate for the petitioners	
Mr. S. L. Bhapkar, Advocate for the respondent	

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 3rd SEPTEMBER, 2015

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with

consent of learned advocates for the parties.

2. This petition has been moved against order dated 24th January, 2014, upon Exhibit-38 - an application for amendment of plaint in Regular Civil Suit No. 345 of 2005 pending before civil judge, senior division, Beed, originally seeking declaration of ownership and injunction in respect of property referred to therein.

3. The suit had been instituted in 2005. It appears that issues too were framed in 2006. However, the proceedings lingered on and quite a few measurements in respect of the suit land also appear to have taken place. The plaintiffs have referred to three measurements in the amendment application, one by the plaintiffs and other by the defendant and yet another by Taluka Inspector of Land Records.

4. Taluka Inspector of Land Records came to be appointed as court commissioner, who placed report before the court about encroachment by defendant to the extent of fifty five *Are* over the suit property. It appears that in spite of the report, for quite a while, no movement in respect of amendment to the plaint had been made by the plaintiffs. Subsequently, application Exhibit-38 came to be filed. The Court, however, purportedly rejected the

same, under the order referred to herein above.

5. It appears that the court has considered that since the matter had been pending for a long time, trial should be deemed to have commenced, after the issues were framed. The prevailing position of law, however, may not endorse such a view of the trial court. Even otherwise, the parties are not at dispute about the fact that evidence as yet has not commenced. Plaintiffs are yet to file affidavit of examination in chief. Under the circumstances and having regard to prevailing position of law, trial could not be said to have commenced.

6. The report has been submitted by Taluka Inspector of Land Records during pendency of the suit and under the circumstances, the application for amendment based on the same has been moved.

7. Learned advocate Mr. Bhapkar vehemently submits that the plaintiffs had been sitting tight for a long period and further that no indulgence should be shown because of this laxity. He further contends that amendment as sought would change nature of the suit from injunction to one of possession. Mr. Bhapkar also submits that with the amendment, it would be a different cause of action and as such, single suit may not be

maintainable.

8. Looking at that allegations are in respect of same suit property, against same defendant, by the same plaintiffs and if something emerges on report, which necessitates in amendment in respect of the same, such an amendment may be incidental. Having regard to contentions in the *lis* among the parties, it cannot absolutely be said that the suit would undergo change in nature, under the amendment as sought when injunction in respect of the suit property is sought along with possession in respect of the property not to be found in possession. It is not that two reliefs claimed are absolutely incompatible.

9. As far as second limb of argument of respondent about cause of action is concerned it would be for the respondent - defendant to take up such resistance if he chooses to file amended written statement to the amended plaint and the same will have to be decided by the court in accordance with law. However, for that amendment need not be stalled.

10. The courts generally take a liberal view while it comes to amendment and will not look into the same technically. In the present case trial cannot be said to have commenced. Under the circumstances, amendment application may deserve a lenient

consideration.

11. However, having regard to that the plaintiffs appear to have taken a very long time in making movement for amendment, the inconvenience being caused to the defendant would be required to be mended by awarding reasonable costs. Mr. Thigale, learned advocate for the petitioners submits that the plaintiffs are agriculturists and as such, due regard be had to the same while imposing costs. Having regard to the amount of delay being claimed by the defendant caused by plaintiffs in making an approach for amendment, I deem it appropriate that the plaintiffs shall pay an amount of Rs.5000/- towards costs.

12. Accordingly, the writ petition stands allowed in terms of prayer clause "B", however, subject to payment of costs of Rs.5000/- to be deposited in the trial court within a period of four weeks from the date of receipt of writ of this order, to be paid to the defendant. Payment of costs is a pre-condition for amendment. In case costs are not deposited within the time stipulated, the trial court may pass appropriate orders. Rule is made absolute as indicated above.

[SUNIL P. DESHMUKH, J.]