

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7130 OF 2014

Dhruv P. Rawal and ors.

.. Petitioners

vs.

Rajendra S. Gandhi and ors.

.. Respondents

Ms Anita Castellino i/b Bruno Castellino for the Petitioners.

Mr. Sagar Kasar for Respondent Nos.2 and 3.

CORAM : M. S. SONAK, J.

DATE : 17 JULY 2015.

P.C. :-

1] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

2] This petition challenges the order dated 26 February 2014 made by the learned Civil Judge, Junior Division, Manmad, permitting the plaintiffs to adduce additional evidence, after the conclusion of both examination-in-chief and cross-examination of the plaintiffs. Learned Civil Judge says that such order has been made '*in interest of justice*'.

3] In application at Exhibit-142, upon which the impugned has been made, there is reference to certain events subsequent to filing of affidavit-in-lieu of examination-in-chief. Accordingly, leave

was applied for to adduce additional evidence in the context of such subsequent events. To the query as to whether the respondents-plaintiffs have amended the plaint, the response was that such amendment was applied for and the same is pending consideration.

4] It is trite that there can be no variance between pleadings and proof. Without there being any amendment to the pleadings, there was no question of learned Civil Judge permitting the respondents-plaintiffs to adduce additional evidence. On this short ground, the impugned order will have to be set aside and is accordingly, set aside.

5] However, the application seeking amendment of the plaint, may be considered by the learned Civil Judge on its own merits and in accordance with law. In case the same is allowed, the respondents-plaintiffs shall be at liberty to apply for leave to lead fresh evidence in the context of the amended pleadings. Such application also shall be considered by the learned Civil Judge in accordance with law. All contentions of the petitioners in regard to the application seeking leave to amend as also in application that may be subsequently made, if and when occasion therefor, arises are

kept open and shall also be considered by the learned Civil Judge Court in accordance with law.

6] Subject to aforesaid observations, Rule is made absolute in terms of prayer clause (c). There shall, however, be no order as to costs.

(M. S. SONAK, J.)

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