

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION(ST)NO.30963 OF 2014**

Ahmed Gulab Mestri since deceased through Lrs Hamid Ahmed Mestri & Ors.	...Petitioners
vs.	
Mohammed Farouq Mohammad Ismail Mulla	...Respondent

Mr. S. M. Gorwadkar i/b. Niranjan Mogre for the Petitioner.
Mr. A. S. Khandeparkar i/b. Pratap Patil for the Respondent.

CORAM : R. M. SAVANT, J.

DATE : 11th MARCH, 2015.

PC. :-

The writ jurisdiction of this Court is invoked against the order dated 21st November, 2014 passed by the learned Civil Judge, Junior Division, Khalapur, by which order the application Exhibit 87 filed for amendment of the plaint, to incorporate averments relating to the subsequent events came to be allowed. In so far as the subsequent events are concerned, they relate to the suit being Regular Civil Suit No.12/2004 filed for injunction by the Defendant in the instant suit. In the said suit, an order of temporary injunction was granted to the Plaintiff in the said suit i.e. the Defendant in the present suit on the basis that the Plaintiff is in possession. Hence, one of the amendment

sought is for incorporation of the averments relating to the said suit filed by the Defendant in the instant suit as also the order of temporary injunction passed on the basis that the Plaintiff is in possession. The Plaintiff in the instant suit has also sought the incorporation of a prayer clause for recovery of possession from the Defendant. This is one of the amendment sought.

2] The second amendment sought is a reference being made to the proceedings culminating in the order dated 31st August, 2013 passed by the Maharashtra Revenue Tribunal by holding that the Defendant is not an agricultural tenant within the meaning of Bombay Tenancy & Agricultural Lands Act, 1948. The Trial Court has allowed the said application over ruling the objection that was raised on behalf of the Defendant that the said application is moved belatedly and long after the adjudication in respect of the application for temporary injunction having taken place in the suit filed by the Defendant being Regular Civil Suit No.12/2004. The Trial Court has allowed the application subject to the cost of Rs.3000/- on the Plaintiff to be paid over to the Legal Aid Fund.

3] In my view, having regard to the nature of the amendment sought and the subsequent events which have transpired pending the instant suit, the impugned order passed by the Trial Court allowing

the amendment application Exhibit 87 cannot be found fault with. It is well settled that an amendment which results in the complete and effectual adjudication of the dispute between the parties as also the amendment which results in the avoidance of multiplicity of the proceedings, is required to be allowed. If the said yardstick is applied the impugned order passed by the Trial Court cannot be said to suffer from any error of jurisdiction or any illegality for this Court to interfere in its writ jurisdiction. Though the application for amendment stands allowed, needless to state that the issue of limitation in so far as the relief of possession is concerned, is kept open as also the issue as to whether the amendment would relate back to the filing of the suit. This Court does not express any opinion on the said aspects. With the aforesaid observations, the Writ Petition is disposed of.

4] The learned counsel for the parties are *ad-idem* that the hearing of the suit in question i.e. Regular Civil Suit No.19/1980 be expedited. The hearing of the said Regular Civil Suit No.19/1980 is accordingly expedited and is directed to be disposed of by 31st December, 2015.

(R. M. SAVANT, J.)