

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

WRIT PETITION NO. 2851 OF 2016

Mushtaq Beg Jahur Beg Mirza ... Petitioner

Versus

Nawaji Kha Sarfarzkha Pathan and others ... Respondents

.....
Mr. Mukul S. Kulkarni, Advocate for petitioner
.....

CORAM : SUNIL P. DESHMUKH, J.

DATE : 14th MARCH, 2016

ORDER :

1. Leave to amend.
2. Heard learned counsel for the petitioner.
3. Mr. Kulkarni, learned advocate appearing for the petitioner/defendant vehemently contends that impugned order dated 15-12-2015 passed by the Joint Civil Judge, Junior Division, Dhule on Exhibit-32 in Regular Civil Suit No. 188 of 2014 granting amendment application of the plaintiffs does not depict application of mind to the facts and the submissions as desired.
4. Learned counsel has briefed the court on facts referring to that this is a suit by the relatives of niece of the original owner and has a slender thread of relation since parties are *muslims* by

religion. He refers to various aspects by virtue of which the defendant has been in possession of the suit property from a long time and that right from beginning it is the case of the defendant that he is in possession.

5. Issues have been framed in the suit and the matter can be said to be ready for evidence. He further submits that the suit is for simplicitor injunction and under an amendment it is sought to be altered into a suit for possession.

6. According to learned counsel, the impugned order falls too short to reason out as to why the amendment application should be allowed.

7. After having heard learned counsel for petitioner for quite some time, it appears to be a case which is sought to be advanced on behalf of the plaintiffs - respondents before the trial court that it is during the pendency of the suit, they have been dispossessed, and in such a case, an amendment seeking possession may not exactly be said to be incompatible with the request being made under the suit. It is in the natural course, the amendment is said to have been necessitated, alleging that it is during the proceedings, certain events have occurred.

8. Having regard to aforesaid, the trial court appears to have exercised discretion in favour of the plaintiffs. Such an amendment,

prima facie, does not appear to prejudice the merits of the case or the case being pleaded on behalf of the defendant. It is open for the defendant to resist the contents of the amendment in plaint in his own rights. The impugned order cannot be said to be not adhering to judicial principles or against principles of justice, equity and good conscience.

9. I am therefore, not inclined to exercise discretion in favour of petitioner. As such, writ petition stands rejected.

(SUNIL P. DESHMUKH, J.)

sms