

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

WRIT PETITION NO. 3392 OF 2016

Sainath s/o Gorakshnath Godge and another ...Petitioners

Versus

Shamshad Juber Saudagar and others ...Respondents

.....
Mr. S. B. Kadu, Advocate for petitioners
.....

CORAM : SUNIL P. DESHMUKH, J.

DATE : 28th MARCH, 2016

ORDER :

1. Petitioners – defendants No. 4 and 5 are before this court challenging order dated 3rd August, 2015 on Exhibit-35 in Regular Civil Suit No. 277 of 2014 of Civil Judge, Junior Division, Sangamner, wherein, amendment sought by respondents No. 1 to 4 – plaintiffs to the suit has been allowed.

2. Heard learned counsel for the petitioners. He contends that initial claim under the suit was with reference to property being ancestral and under the proposed amendment, additions are sought, that the property has come to the share of plaintiffs under *Hibanama* executed in the year 1983 and further for demolition of unauthorised construction carried on by defendant

No.5 over the suit property. According to him, this would change the nature of suit.

3. Learned counsel for petitioners – defendants No. 4 and 5 submits that it is only a photocopy and not original *Hibanama*. It would be for trial court to consider these aspects.

4. The amendment sought cannot be said to be unrelated and would change into nature of suit.

5. The suit has been instituted for cancellation of sale-deeds and for injunction. Having regard to that the suit is of 2014, issues have yet not been framed. Perusal of impugned order reveals consideration of relevant aspects by the trial court, it does not appear to be a case wherein discretion vested in this court could be exercised and the order is liable to be interfered with.

6. In the circumstances, I am not inclined to interfere with the impugned order. Writ petition, as such, stands rejected.

7. It is, however, open for the petitioners to resist the amendments by amending written statement.

(SUNIL P. DESHMUKH, J.)

sms