

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11995 OF 2014

ASHOK SUDHAKAR PUJARI SINCE DECEASED THR. LRS MANDAKINI
ASHOK PUJARI AND OTHERS
VERSUS

THE PACHORA MUNICIPAL COUNCIL PACHORA, THR. ITS CHIEF
EXECUTIVE OFFICER

...
Advocate for Petitioners : Mr. P.S. Shendurnikar
Advocate for Respondent : Mr. Dhananjay B Thoke
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CORAM : V. K. JADHAV, J.
DATED : 9th FEBRUARY, 2016

PER COURT:-

1. By consent of parties, heard finally at admission stage.
2. The present petitioners instituted a suit bearing R.C.S. No. 2 of 2010 seeking declaration and perpetual injunction restraining the respondent, perpetually from interfering with the possession of the petitioners over the suit property. During pendency of suit, it is alleged that, the respondent Municipal Council, Pachora took a forcible possession of the part of suit property and also demolished certain portion of the structure owned by the petitioner for the purpose of road widening. The petitioner therefore, constrained to file an application Exh.70 seeking amendment in the plaint to bring on record subsequent events in the form of loss of possession of certain portion of the suit property. The learned Judge of the trial

court by impugned order dated 4.7.2013 rejected said application Exh.70 on the ground that if the proposed amendment is allowed, then it will change entire nature of original suit. Hence, this writ petition.

3. Learned counsel for the petitioners submits that initially the trial court has granted status quo till appearance of the respondent Municipal Council in the suit. Thereafter, application filed by the petitioners-plaintiffs for issuance of temporary injunction Exh.6 came to be rejected. Being aggrieved by the same, the petitioners-plaintiffs preferred Misc. Civil Appeal before the District Court. During pendency of said Misc. Appeal, the respondent forcibly took possession of the part of suit property for the purpose of road widening. Learned counsel submits that it was therefore, necessary for the petitioner to bring on record the subsequent events in the form of loss of possession over certain part of suit property after rejection of application for temporary injunction. Learned counsel submits that the same would not change the nature of suit and in order to avoid multiplicity of litigation, the trial court ought to have allowed the application Exh.70.

Learned counsel in order to substantiate his submissions, places reliance on the judgment of this Court in the case of

Balkrishna Ganpat Elwande vs. Shankar Tukaram Sable and others, reported in **2006 (6) Mh.L.J. 224**.

4. Learned counsel for the respondent-Municipal Council, submits that the proposed amendment would change the nature of suit entirely. Learned counsel submits that from the approved plan, it appears that the petitioners-plaintiffs have made encroachment over the portion of road and therefore, the Municipal Council was constrained to remove the said encroachment while widening the road. Learned counsel submits that by way of proposed amendment, the petitioner is not only seeking recovery of possession of certain portion of suit property but also in the alternate claiming other land in lieu of land acquired by the Municipal Council for widening of road. Learned counsel therefore, submits that the trial court has rightly rejected said application Exh.70 and therefore there is no substance in the writ petition and the same be dismissed.

5. On perusal of impugned order, it appears that the learned Judge of trial court has rejected application Exh.70 only on the ground that if the proposed amendment is allowed, it will change entire nature of original suit. It is not disputed that during pendency of suit more specifically, during pendency of Misc. Civil Appeal preferred by the petitioners-plaintiffs against order of rejection of

application for temporary injunction, the respondent Municipal Council, took possession of certain part of suit property for the purpose of road widening. The petitioners filed an application Exh.49 seeking appointment of Court Commissioner for measurement of the suit property so as to bring on record as to the exact portion of suit land occupied for the purpose of road widening. The said application came to be allowed and accordingly the Court Commissioner had also carried out the commission and submitted a report to the trial Court.

6. In the case of ***Balkrishna Ganpat Elwande (supra)***, relied upon by the learned counsel for the petitioners, this Court has taken a view that even in the suit for permanent injunction to restrain defendants from obstructing possession of the plaintiff over suit property, the amendment of plaint to bring subsequent events on record and to seek possession of the suit property from the defendant, would not change the nature of suit and it can be allowed to avoid multiplicity of proceedings.

7. In view of the above discussion, the impugned order certainly calls for interference. The learned Judge of the trial court has erroneously rejected the application Exh.70. Hence, the following order:-

O R D E R

- I. Writ petition is hereby allowed.
- II. The order dated 04.07.2013, passed by the learned Civil Judge, Junior division, Pachora below Exh.70 in R.C.S. No. 2 of 2010 is hereby quashed and set aside. Application Exh.70 is hereby allowed.
- III. The petitioners-plaintiffs to carry out the amendment within 14 days from the date of receipt of this order by the trial court.
- IV. Writ petition is disposed of accordingly. No costs.

(V. K. JADHAV, J.)

rlj/