

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7024 OF 2015

VAIJINATH VITHAL KASHID AND ANOTHER
VERSUS
BAPURAO RAGHUNATH MULE

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Advocate for Petitioners : Mr. Ghayal Sanjay D.
Advocate for Respondent : Mr. B.B. More with Mr. M.B. Ubale

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CORAM : V. K. JADHAV, J.
DATED : 25th FEBRUARY, 2016

PER COURT:-

1. By consent of learned counsel for the parties, heard finally at admission stage.
2. The respondent-original plaintiff has instituted a suit bearing R.C.S. No. 537 of 2011 for decree of perpetual injunction. The petitioners-original defendants have strongly resisted the said suit by filing their written statement. In the light of pleadings of the parties, the trial court has framed issues and fixed the suit for hearing. During pendency of suit, the respondent-plaintiff has filed an application Exh.46 for carrying out amendment in the pleadings. The trial court vide impugned order dated 9.3.2015 allowed the said application. Hence, this writ petition.
3. Learned counsel for the petitioners submits that the proposed

amendment by way of filing application Exh.46 is as vague as it could be. Learned counsel submits that by way of proposed amendment, the respondent-plaintiff is seeking relief of declaration. Learned counsel submits that suit is instituted simplicitor for perpetual injunction and by way of this amendment, nature of suit is entirely changed. Learned counsel for the petitioners submits that suit is of the year 2011 and the trial court may be directed to expedite the hearing of suit.

4. Learned counsel for the respondent submits that the respondent-plaintiff in para 9 of the plaint has raised specific pleading that the defendants are trying to forcibly dispossess the respondent-plaintiff so as to grab the fertile land illegally by hook or crook. Learned counsel submits that though application Exh.46 is not happily drafted, by way of proposed amendment, the respondent-plaintiff has pointed out to the Court that incorrect boundaries have been shown in the sale deed by the defendants and on the basis of same, the defendants are trying to dispossess the respondent-plaintiff. Learned counsel submits that the trial court has therefore, rightly allowed the application Exh.46. There is no substance in the writ petition. Writ petition thus liable to be dismissed.

5. In para 9 of the plaint, the respondent-plaintiff has specifically pleaded that the defendants are forcibly trying to dispossess the plaintiff from the suit land. From the contents of proposed amendment, it

appears that the respondent-plaintiff has tried to elaborate the same by pointing out to the court that incorrect boundaries have been shown in the sale deed and on the basis of which the defendants are claiming their ownership and possession over the portion of land Gat No. 137. Learned Judge of trial court has therefore, correctly observed that the proposed amendment is necessary to decide the controversy involved between the parties. The respondent-plaintiff has not sought any relief of declaration but has simply elaborated the pleadings in para 9 of the plaint that the defendants are trying to dispossess the respondent-plaintiff on the basis of false and imaginary boundaries, mentioned in their respective sale deeds. The proposed amendment, in my opinion, would not change the nature of suit. There is no substance in the writ petition. No interference is warranted in the impugned order. Hence the following order:-

O R D E R

- I. Writ petition is hereby dismissed. There shall be no order as to costs.
- II. The trial court is hereby directed to expedite the suit and dispose of the same within one year from today.

(V. K. JADHAV, J.)

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