

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1345 OF 2015

Ramchandra Bhanudas Hipparkar and others.. **Petitioners**

Versus

Kamlakar Khanderao Shinde and others .. **Respondents**

Shri B. N. Patil, Advocate for the Petitioners.

Shri Vivek Vasantryao Bhavthankar, Advocate for Respondents.

CORAM : S. V. GANGAPURWALA, J.

DATE : 14th December, 2017

PER COURT :

1. The respondents plaintiffs filed suit for declaration and injunction. Subsequently filed an application **Exhibit-123** seeking amendment in the plaint thereby claiming recovery of possession. The application is granted, hence the present petition.

2. Mr. Patil, learned advocate for the petitioners submits that the plaintiffs were aware of the mutation entries in the year – 1998. However in the suit filed in the year – 2000 did not seek the relief of possession. According to the learned advocate, false case is made out in the amendment application that the plaintiffs are dispossessed during the pendency of the suit. The

defendants were in possession of the property pursuant to the registered instruments. All these aspects are not considered by the trial court. The nature of the suit also would change. This aspect has been lost sight of by the trial court.

3. Mr. Bhavthankar, learned advocate supports the order.

4. The plaintiffs in the amendment application have come with the case that during the pendency of the suit they have been dispossessed. It is trite that the merits of the amendment application are not to be considered while entertaining the amendment application. The plaintiffs claim to have been dispossessed during the pendency of the suit. It is for the plaintiffs to prove the same. However, the amendment that is allowed will be subject to limitation.

5. Though I am not interfering with the order passed by the trial court, however it is clarified that the amendment application allowed would be subject to the law of limitation. It will be open for the defendants to raise the aspect of limitation which will have to be considered by the court at the time of deciding the suit.

6. The writ petition is accordingly disposed of. No costs.

[S. V. GANGAPURWALA, J.]