

**IN THE HIGH COURT OF JUDICATURE
AT BOMBAY**

BENCH AT AURANGABAD.

WRIT PETITION NO.1199 OF 2015

Daulat Shankar Pandharkar
and another. ...Petitioners.

Versus

Ramdas Genu Pandharkar
and others. ... Respondents.

...

Mr.Satyajit Bora, advocate for the petitioners.
Mr.V.S.Bedre, advocate for Respondent Nos.1 to 6.

...

CORAM : S.V.GANGAPURWALA, J.

Date : 15.12.2017.

PER COURT :

1. The application for addition of party
and seeking amendment in the plaint is rejected.

2. Mr.Bora, learned counsel submits that
the petitioners had filed suit for simpliciter
injunction against the Respondents from
obstructing their way as detailed in the plaint.

The parties went on trial as per the issues framed. After the parties had concluded their arguments and the matter was reserved for judgment, the Court framed additional issue about non-joinder of necessary parties and allowed the parties to lead additional evidence if any within eight days. After the said issue was framed, the petitioners filed an application for addition of parties and also seeking amendment by incorporating the pleadings of easementary right. The Court on technical ground has rejected the application. Order I Rule 10(2) of the C.P.C. allows implement of party at any stage.

3. Mr.Bedre, learned counsel submits that in the plaint, the plaintiffs never claimed easementary right. If the amendment in regard to easementary right is allowed, that would change the nature of the suit. After the final arguments were concluded, the petitioners had moved application for addition of party and amendment. In the Written Statement, the defendants have specifically raised the plea that the suit is bad for non-joinder of necessary parties, no steps

were taken by the plaintiffs till the issue is framed by the trial Court. Reasons are given by the trial Court for rejecting the application. The same are legal and proper.

4. I have considered the submissions.

5. So far as the application of the petitioners seeking amendment to the extent of incorporating the pleadings of easementary right, the same certainly can not be considered at this stage. There is no whisper in the pleadings of the plaint about the easementary right. At such stage, the said pleadings certainly could not have been allowed.

6. The parties normally proceed with the case on the basis of issues framed. The issues are framed so as to notify the parties about the nature of the dispute. In the present case though the plea was raised in the Written Statement of non-joinder of necessary parties, it appears that the parties did not press the said fact about non-joinder of parties and allowed the

trial to proceed. After the arguments were concluded and the matter was posted for judgment, the Court suo-motu framed additional issue about non-joinder of necessary parties and gave liberty to the parties to adduce further evidence. At that stage, the application is filed.

7. In fact, the suit is for simpliciter injunction. The Court has also not considered whether such an issue was necessary. However, as the issue has already been framed to that effect, the petitioners seek to add parties. Considering the fact that even rights of the parties may be effected, it would be in fitness of things to allow the application to the extent of addition of parties.

8. In the result, I pass the following order :

a) The application filed by the petitioners Exh.78 is allowed to the extent of addition of parties. The amendment with regard to easementary right stands rejected.

b) The Writ Petition is accordingly
disposed of. No costs.

(S . V . GANGAPURWALA, J .)

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