

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8830 OF 2016

SAU. MINA KESHAVRAO SOLANKE
VERSUS
PANDIT NANABHAU KADAM

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Advocate for Petitioner : Mr. Khandare N.B.
Advocate for Respondent : Mr. Thombre S.S.

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CORAM : SUNIL P. DESHMUKH, J.
DATE : 23-08-2017

JUDGMENT :

1. Heard learned counsel for the petitioner and the respondent.

2. The petitioner, who is plaintiff in regular civil suit no. 50 of 2014 instituted for perpetual injunction in respect of the property referred to in the suit. While the suit has been so instituted, it appears that in paragraphs no. 5 and 7, reference has been made to some consolidation proceedings in respect of certain lands and with reference to the same, it has accordingly been referred to that the land is being about to be encroached upon. Subsequently, the respondent had filed written statement and had denied the contents thereof and had referred to certain aspects in his additional written statement.

3. An application exhibit 33 has been moved, submitting that the portions appearing under paragraphs no.5 and 7 are not relevant to the matter in controversy and, as such, the deletion of said paragraphs and substituting paragraphs 5 and 7, as referred to in the application have been sought. The application had been opposed by respondent.

4. The trial court while deciding the application, appears to have gone by the contents appearing in the application and merits thereof and considered that it is likely to hamper the defence of the defendant.

5. Be that as it may, while the deletion of the paragraphs had been sought with substitution of some other content, so far as substituted portion is concerned, there is no comment by the trial court. Further, it has to be considered that the written statement in respect of said paragraphs has already been appearing in the matter with further explanation in the written statement.

6. In such a case, the consideration that the deletion is likely to hamper the defence, may not be a proper consideration for rejection of the application, as defence in respect of the same is a part of written statement and further while it would be open for

defendants to file amended written statement in respect of amendments caused pursuant to amendment application. The stage at which suit stands appears only the written statements are filed and issues are yet to be framed.

7. In the circumstances, taking into account view that amendments are to be approached liberally, more so in cases of written statement, it would be expedient that, the writ petition and the application are allowed.

8. In the circumstances, writ petition is allowed in terms of prayer clause (B).

9. It is open for the defendant to file amended written statement, if they so desire, upon amendments, as asked for in the application exhibit 33 are carried out.

[SUNIL P. DESHMUKH]
JUDGE

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