

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9753 OF 2017

VIKAS MADHUKAR PATIL AND OTHERS
VERSUS
RAMKRUSHNA HIRAMAN PATIL AND OTHERS

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Advocate for Petitioners : Shri Patil Vijay B.

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CORAM : RAVINDRA V. GHUGE, J.

Dated: September 06, 2017

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PER COURT :-

1. The petitioners are aggrieved by the order dated 10.7.2017 / 11.7.2017, by which the trial Court has permitted the plaintiff to amend the plaint.

2. Learned counsel for the petitioners / defendants 1 to 4 has strenuously criticized the impugned order. Contention is that by the amendment, the cause of action is sought to be altered. A relief which is otherwise barred by limitation, is sought in the suit. Learned counsel has drawn my attention to the specific averments set out in the memo of the petition. It is prayed that an amendment under Order VI Rule 17 of the CPC which will alter the cause of action, cannot be allowed.

3. I find from Exhibit 97 that the plaintiff has pointed out subsequent events that have purportedly occurred. The trial Court has considered the said aspect and has taken into account that the subsequent events appear to have occurred on 7.6.2017 and thereafter.

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The suit has been filed for partition and separate possession in land Gut No.668. The plaintiffs appear to contend that the subsequent events have led to the loss of possession.

4. It is trite law that if an amendment could avoid multiplicity of litigation and if it does not alter the cause of action, such amendment should be permitted. The events that have occurred on 7.6.2017 have been narrated by the plaintiff in Exhibit 97. If these subsequent events are not permitted to be brought on record, the plaintiff would have to file a separate suit.

5. The trial Court has also recorded that it is open to the petitioners to raise a defence as regards the limitation with regard to the amended portion, by filing a written statement. The issue of limitation, if any, would, therefore, be considered by the trial Court.

6. Considering the above, I do not find that the impugned order could be termed as being perverse or erroneous.

7. Considering the above, this petition being devoid of merits is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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