

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11829 OF 2017

NARMADA DYNABA PILGURE AND ANOTHER
VERSUS
SUBHASH @ SWAROOP TUKARAM PILGURE

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Advocate for Petitioners : Shri Patil Indrale Anand V.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: October 03, 2017
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PER COURT :-

1. The petitioners are aggrieved by the order dated 6.7.2017, by which, the application Exhibit 58 filed by the original plaintiffs has been allowed and the proposed amendment has been permitted.

2. Learned counsel for the petitioners has strenuously canvassed that the defendants had put forth a specific case that they are in possession of the suit property. This defence was posed in the light of the contention of the plaintiff that he is in possession. The suit was instituted in 2014 and only to come out of the specific averment made by the original defendants, that they are in possession, that the plaintiff has filed Exhibit 58 seeking leave to amend the plaint by taking up the ground that

during the pendency of the suit, the plaintiffs have been dispossessed. The petitioners have also entered their counter-claim.

3. Reliance is placed on the judgment delivered by this Court in the matter of Vera Lelisa Viegas Pereira Vs. Agnelo Cestano Colaco and others [2014 (1) Mh. L.J. 170], to support the contention that the proviso below Rule 17 under Order VI of the CPC with regard to due diligence obliges the applicant from indicating the circumstances, which prevented him from amending the plaint earlier.

4. I have considered the impugned order in the light of the submissions of the learned Advocate. It is trite law that the merits of the proposed amendment are not be assessed, while dealing with an application seeking amendment.

5. By Exhibit 58, the plaintiff has put forth a cause that during the pendency of the suit, he has been dispossessed by the defendants. The trial Court has granted the amendment, which would not mean that it has accepted the contention of the plaintiff. Merely by granting the amendment, the issue raised by the plaintiff will not stand proved. By leading oral and

documentary evidence, the plaintiff will have to establish that he was dispossessed during the pendency of the suit. This, therefore, would protect the interest of the defendants.

6. I do not find that the proposed amendment would alter the nature of the suit. Costs of Rs.1,200/- have been imposed upon the plaintiffs by the impugned order.

7. Considering the above, I do not find that the impugned order could be termed as being perverse or erroneous or likely to cause grave injustice to the petitioners / defendants.

8. This petition being devoid of merits is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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