

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

919 WRIT PETITION NO. 14003 OF 2017

PRAKASH VASANTRAO PATIL AND ANOTHER
VERSUS
SURESH BABURAO JALKE AND OTHERS

...
Advocate for Petitioners : Mr. Sambhaji S. Tope.
...

CORAM : **V. K. JADHAV, J.**
DATE : 05th December, 2017.

ORDER:

. I find no substance in this writ petition. The Respondents / original Plaintiffs have filed an application Exhibit 38 in Regular Civil Suit No.156 of 2013 for carrying out the amendment in the plaint. The Trial Court by impugned order dated 6th September, 2017, allowed the said application. Hence, this writ petition.

2 The learned counsel for Petitioners / original Defendants submits that during the pendency of the suit, on account of some interim orders passed by the Trial Court, the Respondents / Plaintiffs have preferred a miscellaneous appeal before the District Court and during the pendency of said miscellaneous appeal, the District Court has appointed a Court Commissioner. After carrying out necessary inspection, the Court Commissioner has submitted the report before

the District Judge pointing out therein that the alleged road in between Survey Nos.223/4 and 223/2 has been closed and there is no alternate road. The learned counsel submits that the learned District Judge has no occasion to consider the report submitted by the Court Commissioner since the appeal was withdrawn. The learned counsel submits that the Respondents / Plaintiffs on the basis of said report, filed an application seeking amendment in the plaint. The learned counsel submits that the proposed amendment would entirely change the nature of the suit. The Respondents / Plaintiffs have instituted the suit simplicitor for a decree of perpetual injunction and by way of the proposed amendment, incorporated the relief of mandatory injunction to remove the obstructions on the road and as such, the entire nature of the suit has been changed.

3 On perusal of the copy of plaint, it appears that the Respondents / Plaintiffs have instituted the suit in respect of the disputed road, which is situated towards the northern side of the suit land and thereafter, the land of the Petitioners / Defendants is situated. According to the Respondents / Plaintiffs, they are using the said road since their forefathers. The Respondents / Plaintiffs have also submitted a *Kaccha* map alongwith the plaint to show the position of the said road. Even though the said miscellaneous appeal came to be

withdrawn by the Respondents / Plaintiffs pending before the District Court, the Respondents / Plaintiffs can very well rely upon the report submitted by the Court Commissioner before the learned District Judge. In the light of the said report, the Respondents / Plaintiffs have filed the application Exhibit 38 pointing out to the Court that there is no other way to the suit land as an access except the said disputed road and in terms of the report submitted by the Court Commissioner before the District Judge, if the said road has been closed by the Petitioners / Defendants, the Respondents / Plaintiffs are entitled to incorporate the relief of mandatory injunction to clear the road and also entitled to file the corrected *Kaccha* map to show the exact position of closing of the said road by the other side.

4 Even though the trial of the suit has been commenced, if the amendment is based on subsequent events, the said amendment is permissible if it is necessary to decide the real controversy between the parties. Thus, considering the pleadings of the Plaintiffs, I do not find that the proposed amendment would change the nature of the suit. I do not find any substance in the submissions made on behalf of the Petitioners / Defendants that since miscellaneous civil appeal before the District Judge came to be withdrawn, the report submitted by the Court Commissioner before the District Judge also loses its

significance. I do not find any fault in the impugned order. There is no substance in this writ petition. The writ petition is hereby dismissed.

No costs.

[V. K. JADHAV, J.]

ndm