

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1020 OF 2017

RAVI DAMODHAR KARMADKAR AND ANOTHER
VERSUS
ABHAY ABASAHEB DESHMUKH AND OTHERS

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Advocate for Petitioners : Mrs. P V Langhe
Advocate for respondent No.3: Mr. A.D. Gadekar

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CORAM : V. K. JADHAV, J.
DATED : 14th DECEMBER, 2017

PER COURT:-

1. The trial court has rejected application Exh.57 filed by the petitioners-original plaintiffs for appointment of Court Commissioner on the ground that there is no pleading about boundary dispute and the suit is also instituted for declaration of sale deed to be null and void. Though the trial court has committed error by applying bar under Section 11 of C.P.C., as per the pleadings of the petitioners, the suit is merely instituted for declaration and no other prayers are incorporated by way of amendment, though in application Exh.57, the petitioners have brought to the notice of the court that during pendency of the suit, defendant Nos. 4 to 7 encroached upon the portion of the suit land forcibly and further erected fencing on the encroached portion.

2. Learned counsel for the petitioners submits that the petitioners

would file an application seeking necessary amendment in the pleadings with regard to the alleged encroachment by original defendant Nos. 4 to 7 on the suit land made on 13.1.2016 and also for removal of said encroachment. The petitioners would also incorporate the relief specifically in the prayers before the trial court.

3. The petitioners may file such application seeking amendment in the plaint with regard to the subsequent developments and it is for the trial court to consider the same on its own merits, without getting prejudiced by the order passed on application Exh.57. However, the trial court has rightly rejected the application Exh.57. No interference is required.

4. Needless to say that if such amendment is permitted by the trial court and also incorporating the prayer for removal of encroachment, the petitioners would be at liberty to file an application afresh seeking appointment of the Court Commissioner and it is for the trial court to decide it on its own merits. Writ petition is disposed of accordingly.

(V. K. JADHAV, J.)

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