

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12065 OF 2016

Sudhakar Vishwanath Kumbhar & Ors.	 Petitioners
V/s.	
District Collector, Pune & Ors.	 Respondents

Mr. B.A. Lawate for the Petitioners.

Mr. A.R. Metkari, A.G.P., for the Respondents.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 12TH DECEMBER 2017.

P.C. :

1. Heard Mr. Lawate, learned counsel for the Petitioners, and Mr. Metkari, learned A.G.P., for the Respondent-State.

2. By this Petition, the Petitioners are challenging the order, below Exhibit-11, passed by the District Judge-2, Baramati on 26th August 2015 in Civil Appeal No.6 of 2012. The said application Exhibit-11 was filed by the Petitioners for amendment in the pleadings under Order 23 Rule 1 r/w. Order 6 Rule 17 of C.P.C.

3. The Petitioners have filed Regular Civil Suit No.134 of 2008 for declaration of ownership of the suit property and also for declaration relating to the possession thereof. In the said Suit, Petitioners failed to

prove the ownership and the Trial Court has, accordingly, dismissed their Suit in toto vide its Judgment and Order dated 28th September 2011. Petitioners, therefore, preferred Civil Appeal No.6 of 2012. In the said Appeal, they wanted to give up the claim of declaration relating to ownership and to confine the lis only to the claim of possession over the suit property. The Appellate Court, however, rejected the said application only on the ground that the Petitioners want to change their status from 'ownership' to 'possession' and hence, it is a material change in the suit claim.

4. However, this Court fails to understand how it can be a material change in the suit claim, when, in the original Suit also, the Petitioners have claimed declaration that they are the owners and possessors of the suit property. Now, in view of the finding recorded by the Trial Court that, Petitioners have failed to prove their ownership over the suit property, if they do not want to proceed or to prosecute that claim and want to withdraw the said claim, there is no reason to deny them the said relief. As the claim of possession was made in the plaint itself, now they can proceed only to prove that they are in possession of the suit property, may not be as an 'owner', but in any other capacity. Ultimately, it will be for the Petitioners to prove their possession over the suit property in the Appeal. Learned counsel for the Petitioners also submits that, the Petitioners do not intend to produce any additional evidence,

either oral or documentary, in the course of Appeal. In such situation, there is absolutely no reason to reject the Petitioners' application for amendment, as sought, for giving up the claim relating to declaration of ownership.

5. Therefore, the impugned order dated 26th August 2015, passed by the Appellate Court rejecting the Petitioners' application for amendment filed at “Exhibit-11” in Regular Civil Appeal No.6 of 2012, is quashed and set aside. As a result, the said application below “Exhibit-11”, for amendment, is allowed. Petitioners to carry out necessary amendment within a period of four weeks from today and give a copy thereof to the Respondents.

6. Writ Petition is disposed of in the above terms.

[DR. SHALINI PHANSALKAR-JOSHI, J.]