

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2089 OF 2018

DIGMBAR MAROTI SHELKE AND ANOTHER
VERSUS
SUBHASH MAROTI SHELKE

Advocate for Petitioner : Mr. J.R. Patil.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 13th March, 2018

PER COURT :

1. The petitioners, who are the original defendants, are aggrieved by the order dated 07/11/2017 passed by the Trial Court in R.C.S. No. 91/2013, by which, application Exhibit 94, filed by the plaintiff has been allowed.

2. I have considered the strenuous submissions of the learned advocate for the petitioners/defendants. With his assistance I have gone through the petition paper book and the grounds formulated by him in the memo of the petition.

3. The issue raised in this petition is extremely narrow. The plaintiff has preferred a suit seeking a declaration of ownership and perpetual injunction to the extent of 50 Ares land in gat No. 132. In the body of the plaint, he has stated that he is in possession over 40 Ares land out of his 50 Ares land and 10 Ares land is in the possession of the different person by name Arun Shelke. In the prayer clause he seeks injunction to the extent of 50 Ares land. Recording of oral evidence has been concluded. The defendants have taken a stand in their written statement that when the plaintiff seeks possession of 40 Ares land, his request for declaration and injunction for 50 Ares land is contradictory.

4. By Exhibit 94, the plaintiff seeks to correct his mistake and in fact is scaling down his prayer from 50 Ares land to 40 Ares land. In short, he is praying only to the extent of 40 Ares land that is in his possession and is giving up his earlier prayer of 50 Ares land.

5. I do not find that the defendants can be said to be affected in any manner what so ever by the amendment granted as the plaintiff is scaling down his demand in the plaint. The impugned order is neither perverse nor

erroneous and does not amount to causing gross injustice to the defendants so as to cause an interference. This petition is devoid of merit and is therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

S.P.C.