

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 4411 OF 2017

**SYED ANIS YASIN AND OTHERS
VERSUS
BHAUSAHEB KARBHARI VELGUDE AND OTHERS**

...
Advocate for Petitioners : N. D. Sonawane

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**CORAM : RAVINDRA V. GHUGE, J.
DATED : 8th AUGUST, 2018.**

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PER COURT :

1. On 17/04/2018, none was present for the respondents. On 27/06/2018, a last chance was granted to respondent No.1, who sought an adjournment. Again the matter was adjourned on 13/07/2018. None appears for respondent No.1, today. No appearance has been entered on behalf of respondent Nos. 2 to 5, though served.

2. The learned Advocate for the petitioners submits that the petitioners, who are original plaintiffs in Regular Civil Suit No. 512/2012, had moved an application Exhibit 58 praying for an amendment to the plaint so as to add a paragraph and a prayer clause on the basis of subsequent events. By the

impugned order dated 09/03/2017, Exhibit 58 has been rejected on the ground that the nature of the cause of action is likely to be altered and the trial in the matter has commenced.

3. The petitioners contend that they have preferred the suit for seeking perpetual injunction so as to continue to use the suit road, which runs north-south and the right of way of the plaintiffs would not be disturbed.

4. The written statement was filed by the defendants contending that there is no road available running north-south and an alternate road on the western side is available. At the time of the recording of oral evidence of the plaintiffs, it was revealed that the road running north-south was destroyed by the defendants. According to the plaintiffs, when they sought to use the road on the western side, the defendants have objected to such use. It is on the basis of these events, which are said to have occurred during the pendency of the suit, that the plaintiffs desired to introduce paragraph 5-A to narrate the subsequent events and introduce a prayer clause B-1 seeking a direction to the defendants to restore the road running north-

south.

4. I find from the impugned order that the Trial Court has held that in an earlier suit No. 425/2011, the demand for a cart road from gut No. 301/01 was made. The Trial Court, therefore, held that if the said cart road could have been asked for, the plaintiffs cannot now seek such a cart road from gut No. 294 and gut No. 301/01 as the other adjoining owners are objecting to the same and it will change the nature of the cause of action.

5. The Honourable Apex Court has crystalized the law that the merits of the proposed amendment are not to be adjudicated upon, while considering a request for permitting an amendment. If the amendment sought could be permitted, whether, the litigant amending the pleadings would succeed in getting any relief or not, is not to be taken into account while deciding the application for amendment.

6. The record reveals that the issue of a road in the suit is with regard to gut No. 301/01, 302, 322 and also 294 and 296

on the south-north bandh of the Goygaon to Ladgaon road which the plaintiffs desire to utilize for reaching their agricultural fields on the north side. The prayer is for preventing the defendants from creating obstruction to the plaintiffs in using the said road. If the said road is destroyed by the defendants during the pendency of this suit as is the contention of the plaintiffs, there would be no alternate way. Hence, the Trial Court could have permitted the proposed amendment, which is based on subsequent events and can consider the merits of the claims while deciding the suit. I find that the case of the petitioners is covered by the judgments of the Honourable Apex Court in *Revajeetu Builders and Developers Vs. Narayanswamy and sons and others, (2009) 10 Supreme Court Cases 84* and *Chakreshwari Construction Pvt. Ltd. Vs. Manohar Lal, 2017 (5) Mh.L.J. 195 (SC)*.

7. In view of the above, this petition is allowed. The impugned order is quashed and set aside. Application Exhibit 58 proposing the amendment in paragraph No.5-A and the prayer clause at B-1, is allowed. The amendment shall be carried out within 4 weeks from today.

8. The defendants are at liberty to file their additional written statement only to the amended portion of the plaint,

9. Parties are at liberty to adduce evidence even on the amended portion.

(RAVINDRA V. GHUGE, J.)

shp/-