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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3944 OF 2016

Krushnarao Vinayakrao Deshmukh
Age - 70 years, Occ - Agriculture
R/o Deshmukh Wada, Adavad,
Taluka - Chopda, District - Jalgaon

PETITIONER

VERSUS

Vitthalrao Wamanrao Deshmukh
Age - 64 years, Occ - Agriculture
R/o Deshmukh Wada, Adavad
Taluka - Chopda, District - Jalgaon

RESPONDENT

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Mr. D. J. Patil h/f Mr. N. B. Suryawanshi, Advocate for petitioner
Mr. J.V.Patil h/f Mr. P. R. Katneshwarkar, Advocate for respondent

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 5th JUNE, 2018

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.
2. Learned advocate for the petitioner points out that suit has been filed for injunction seeking restraint on the defendant prohibiting him from interfering with right of user of road and causing construction over the same. Learned advocate submits that while instituting the suit, it had not been realized that

proposed activity of the defendant also had been causing hindrance to user of road abutting property bearing CTS No. 548, which is adjoining the suit property. During the course of proceedings, after written statement had been filed but before evidence could commence, it had been realized that it would be necessary to include property bearing CTS No. 548 in the suit. Accordingly, an application had been moved, however, the same has been rejected for the reasons which are not germane. He submits that order II, Rule 2 of the Civil Procedure Code unnecessarily had been invoked while the same has no concern in the present matter, nor nature of the suit is likely to be changed, however, the same has been considered to be so.

3. Learned advocate for the respondent submits that the application seeking amendment had been moved just when the trial was to commence since issues had already been framed. He submits that the trial court had rightly adjudged the matter and has considered that the matter would go to the root of the case and would change nature of the suit. He, therefore, purports to oppose the writ petition.

4. Although submissions are so advanced on behalf of the respondent – defendant, it will have to be noted that there is no

particular dispute about that the property sought to be included in the suit, bearing CTS No. 548 is an adjoining property and the road concerned, abutting the other properties abuts said property.

5. The trial is yet to commence. In the circumstances, it appears that, in order to avoid multiplicity of proceedings, it would be expedient to let amendment to plaint, subject to costs.

6. In the circumstances, writ petition is allowed in terms of prayer clause "B", subject to payment of costs of Rs.5000/-. Amount of costs be deposited in the trial court within a period of four weeks from the date of receipt of writ of this order for onward transmission to defendant. It would be open for the defendant to amend the written statement. Rule is made absolute in aforesaid terms.

[SUNIL P. DESHMUKH, J.]