

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11204 OF 2018

1. Dr.Ramesh Gopikishan Malani,
Age 70 years, Occu-Medical Practitioner,
R/o N-3, CIDCO, Aurangabad,
Dist.Aurangabad

2. Vijay Gopikishan Malani,
Deceased (Expired and his LR's
are yet to be brought on record.)

3. Sunil Gopikishan Malani,
Age-62 years, Occu-Business,
R/o Jadhav Mandi,
Aurangabad

-- PETITIONERS

VERSUS

1. Defence Department,
Union of India,
Through its Secretary,
New Delhi

2. Defence Estate Officer,
Pune Circle, Pune

-- RESPONDENTS

Mr.A.S.Bajaj, Advocate for the petitioners.
Ms.S.S.Kulthe, Standing Counsel for Union of India.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 09/10/2018

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the
consent of the parties.

2. The petitioners, who are original plaintiffs in RCS No.425/2008, are aggrieved by the order dated 26/06/2018 passed by the Trial Court rejecting application Exh.16, thereby refusing leave to amend the plaint.

3. Mr.Bajaj, the learned Advocate appearing on behalf of the petitioners has strenuously criticized the impugned order and has put forth extensive submissions. He has drawn my attention to the 9 grounds formulated by him in the memo of the petition and the proposed paragraphs set out in the amendment application Exh.16 which was filed on 08/04/2009.

4. It is vehemently contended that the proposed amendment is necessary in a suit filed by the plaintiffs for seeking mandatory injunction. The proposed paragraphs from 3-A to 3-F contain further elaborations. The proposed paragraphs from 3-G and 3-H, addition to paragraph No.5 , addition to paragraph No.7 and the addition of a new prayer clause, are connected with those acts which occurred on 10/01/2009 and 09/03/2009. Though the plaint was lodged in 2007, there was no reason for the plaintiffs to seek amendment since the subsequent events occurred on the above stated dates.

5. The Standing Counsel for the respondents / Union of India has opposed this petition and places reliance upon the judgment of this Court in the matter of Archana Ashok Amburle Vs. Arpana Shankar Dudham and others decided on 10/09/2018 in WP No.8717/2018 at the Principal Seat, to support her contentions that after the issues are cast and an affidavit in lieu of examination in chief has been filed, an amendment should not be permitted.

6. I find that the Law on amendment has been crystallized by the Hon'ble Apex Court in the matter of Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and others [2009 (10) SCC 84] and Chakreshwari Construction Pvt.Ltd., Vs. Manohar Lal [(2017) 5 SCC 212].

7. The plaintiffs have filed the suit seeking mandatory injunction. On 10/01/2009 and 09/03/2009, certain events had occurred which, according to the plaintiffs, was at the behest of the defendants who have tried to disturb the possession of the plaintiffs. The relevant aspects with regard to the subsequent events are set out in the proposed paragraph Nos. 3-G, 3-H, one sentence below paragraph 5 and one sentence below paragraph No.7. As a

consequence to the said events, the claim clause is sought to be added with a sentence which is below (I) in Exhibit 16. Similarly, the prayer that is consequentially required to be added is below (VII) in Exh.16. I am, therefore, of the view that the subsequent events which do not alter the nature of the suit, can be permitted to be brought on record through an amendment.

8. As such, this petition is partly allowed by modifying the impugned order dated 26/06/2018 so as to permit the petitioners to carry out the amendment as proposed under paragraphs (I), 3-G, 3-H, the sentence below (V), the sentence below (VI) and the prayer clause below (VII) set out in Exh.16.

9. The plaintiffs also seek to delete paragraph No.1 and paragraph No.3 of the plaint. These 2 paragraphs are set out in the plaint and they exist for the last 10 years. No reasons are assigned as to why the deletion is to be permitted and more so when the said deletion does not appear to be based on any development or event that has occurred after the lodging of this suit. Exhibit 16 has, therefore, been rightly rejected to this extent.

10. In so far as the introduction of new paragraph Nos. 3-A to 3-F

are concerned, their contents are practically in the nature of submissions. They pertain to some events that occurred in 1954, 1983, 1985 and 1996. No explanation is put forth as regards due diligence in view of the proviso below Rule 17 of Order VI. The rejection of Exhibit 16 to this extent, cannot be faulted and the impugned order cannot be said to be perverse or erroneous.

11. In view of the above, the petition is partly allowed. The amendment permitted by this order shall be carried out on or before 31/10/2018 and an amended freshly typed copy of the plaint shall also be filed on or before the same date. Since the Defence Department of the Union of India is involved and considering the advanced age of the plaintiffs, RCS No.425/2008 is expedited and the Trial Court shall decide the said suit on or before 30/06/2019.

12. The respondents are at liberty to enter an additional written statement in view of the amendment which shall be tendered on or before 30/11/2018. The Trial Court may then recast the issues if found necessary.

13. Rule is made partly absolute in the above terms.

(Ravindra V.Ghuge, J.)

Kranti
Hansraj
Shekatkar

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by Kranti
Hansraj
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