

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

911 WRIT PETITION NO. 11163 OF 2015

HIRAMAN RAMJI SHETE AND OTHERS
VERSUS
VENKATESH LAXMANRAO PARSEWAR

...

Advocate for Petitioners : Mr. P. G. Rodge
Advocate for Respondent : Mr. P. P. Uttarwar

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CORAM : V. K. JADHAV, J.
DATED : 3rd APRIL, 2018

PER COURT:-

1. Heard finally with consent at admission stage.
2. I do not find any substance in this writ petition. The petitioners/original plaintiffs have instituted Regular Civil Suit no.40 of 2009 for removal of encroachment and recovery of encroached portion in respect of the suit plot. The respondent/defendant has strongly resisted the suit by filing written statement. Pending suit, the petitioners/plaintiff have filed application Exh.54 under Order VI Rule 17 of the Code of Civil Procedure seeking amendment in the plaint. By impugned order dated 26.06.2015 the trial court has rejected the said

application. Hence, this writ petition.

3. Learned counsel for the petitioners/plaintiffs submits that the proposed amendment would not change the nature of the claim in any manner and though the petitioners/plaintiffs have filed their affidavit of evidence, the cross-examination is yet to be begin and as such, there is no commencement of the trial in its strict sense. Learned counsel submits that the proposed amendment would not cause any prejudice to the defence of the respondent/defendant. However, the trial court has erroneously rejected application Exh.54.

Learned counsel for the petitioners/plaintiffs in order to substantiate his contentions, placed reliance on judgment of this Court dated 1.10.2013 in Writ Petition no. 4044 of 2013 (Vitthal Kondiba Disle and others Vs. Namdeo Dattu Disle and others, Coram: S. V. Gangapurwala, J)

5. Learned counsel for the respondent/original defendant submits that suit is of the year 2009 and the issues came to be framed way back year in the year 2013. After framing of the

issues, the trial has been commenced and the petitioners/plaintiffs have also filed their affidavit of evidence before the court. Learned counsel submits that the proposed amendment is as vague as it could be. Furthermore, even if, the proposed amendment is considered as it is, the same is in the form of evidence to be led by the petitioners/plaintiffs in support of their main cause. Learned counsel submits that it is well settled that evidence is not required to be pleaded and as such proposed amendment is unwanted and uncalled for.

6. On careful perusal of the contents of application Exh.54, it appears that by referring certain photographs 1 to 4 in number, the petitioners/plaintiffs are trying to explain the fact of encroachment. It appears that the same is in the form of evidence, which is required to be adduced by the petitioners/plaintiffs in order to substantiate their pleadings. The evidence is not required to be pleaded. Furthermore, by referring the photographs, if those photographs cannot be a part of the written statement, the proposed amendment would be meaningless. It further appears that suit is of the year, 2009 and even though the petitioners/plaintiffs have filed their affidavit of

evidence, before cross-examination by the other side, the petitioners/plaintiffs have filed application Exh.54 seeking amendment in the plaint. Thus, considering the nature of the proposed amendment and the stage at which the application Exh.54 came to be filed, I do not find any fault in the impugned order passed by the trial court. There is no substance in the writ petition. The writ petition is therefore, dismissed. No costs.

7. At the request of the learned counsel for the petitioners/plaintiffs, the trial court is hereby directed to dispose of pending suit bearing Regular Civil Suit no.40 of 2009, as expeditiously as possible, preferably within a period of six months from today.

(V. K. JADHAV, J.)

vsm/