

drp

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9677 OF 2016

- | | | |
|----|--|-------------|
| 1. | Gopal Bhaurao Handgu
Age - 52 years, Occ - Agriculture
R/o Sumthana, Taluka - Shirur Anantpal,
District - Latur | PETITIONERS |
| 2. | Govind Taterao Handgu
Age - 62 years, Occ - Agriculture
R/o Sumthana, Taluka - Shirur Anantpal
District - Latur | |
| 3. | Datta Hanmant Kanhere
Age - 10 years, Minor u/g of
Bhagabai @ Bhagirathi w/o Hanmant Kanhere
Age - 30 years, Occ - Agriculture
R/o Kambalga
Taluka - Shirur Anantpal,
District - Latur | |
| 4. | Shashikalabai w/o Gopal Handgu
Age - 45 years, Occ - Household
R/o Sumthana, Taluka - Shirur Anantpal
District - Latur | |
| 5. | Shantabai Babu Kanhere
Age - 70 years, Occ - Household
R/o Kambalga, Taluka - Shirur Anantpal
District - Latur | |

VERSUS

Indirabai Ashok Hunje Age - 40 years, Occ - Housewife R/o sumthana, Taluka - Shirur Anantpal District - Latur	RESPONDENT
--	------------

.....

Mr. Dhananjay Mane h/f Mr. Milind Patil, Advocate for petitioners	
Mrs.M. D. Thube - Mhase, Advocate for the respondent	

.....

[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 11th JUNE, 2018

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard learned advocates for the parties finally with consent quite at length.
2. The petitioners purport to take exception to order dated 9th August, 2016 whereunder subject to payment of costs amendment application at Exhibit-258 in regular civil suit No. 283 of 2011 filed by respondent - plaintiff has been allowed.
3. Mr. Mane, learned advocate holding for Mr. Patil, appearing on behalf of the petitioners - defendants contends that while the suit had been instituted in 2011 and written statement had been filed in 2013, referring to the relevant dates and documents, yet, while one amendment application before application Exhibit-258 had been allowed, till the stage of reaching hearing of the suit, no efforts had ever been taken to bring in amendment as referred to in application at Exhibit-258. He submits that having regard to proviso to Rule 17 of Order VI of the Civil Procedure Code, in absence of due diligence, the application could not have been allowed.

4. Whereas, on the other hand, Mrs. Thube - Mhase, learned advocate appearing on behalf of the respondent - plaintiff submits that specific reference had been made to the events and documents in the plaint and only particulars were sought to be incorporated under the amendment which has been allowed. Impugned order does not cause any particular prejudice to the petitioners and this has been taken into account while passing the order impugned in the present writ petition. She submits that the law is settled that amendments, which are necessary for the purpose of determining real question in controversy, need to be allowed and technical objections in the circumstances, may have to be overruled. She submits that paragraphs No. 4 and 10 and other paragraphs of the plaint give sufficient indication of the basic facts being pleaded and they are being particularly explained by amendment and, as such, the objection being raised to the order passed on Exhibit-258 is unsustainable.

5. Perusal of the reasons given by learned judge while passing the impugned order, shows that he has made reference to several citations and has observed that the plaintiff has already pleaded about the documents in paragraph No. 4 of the plaint and she is intending to plead the fact that she came to know about the alleged adopting deed and relinquishment deed

on 15th August, 2011 and that the law largely bears that the courts should be liberal in allowing amendment and in the present case proposed amendment is explanatory in nature.

6. Having regard to aforesaid observations and further taking into account that discretion has been exercised in favour of amendment, for the technical reasons sought to be raised in the writ petition, it does not appear to be expedient to indulge into the request made under the writ petition.

7. Writ petition is, thus, not entertained and is dismissed. Rule stands discharged.

[SUNIL P. DESHMUKH, J.]