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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.14659 OF 2017

1. Hemant Shrinivasrao Chodhary PETITIONERS
Age - 54 years, Occ - Agriculture & Business
2. Madhuri w/o Hemant Choudhary,
Age - 50 years, Occ - Household

Both R/o Choudhary Galli, Pathri
Taluka - Pathri, District - Parbhani

Presently residing at
Plot No. 15, New Swami Vivekanand Housing
Society, Near Sakhare Mangal Karyalaya
CIDCO, N-8, Sector - F-2,
Aurangabad

VERSUS

Yashwant Vitthalrao Choudhary RESPONDENT
Age - 57 years, Occ - Agriculture
R/o Choudhary Galli, Pathri
Taluka - Pathri, District - Parbhani

Presently
R/o Plot No. AH/1/75, Opposite to Cricket Ground
CIDCO, N-2, Thakre Nagar
Aurangabad

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Mr. Milind Patil, Advocate for the petitioners
Mr. C. C. Deshpande, Advocate for the respondent

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 12th SEPTEMBER, 2018

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.
2. Application Exhibit-27 for amendment to written statement filed by petitioners - defendants in Regular Civil Suit No. 8 of 2015 has been rejected by the trial court under order dated 5th July, 2017 considering that the same is cryptic and tends to do away with earlier assertions in the written statement. Additionally, it has been observed by the trial court that plaintiff has filed his affidavit of examination in chief and about one and half year thereafter, the application has been moved.
3. Learned advocate Mr. Patil, appearing for the defendants - petitioners contends that a little more effort on the part of trial court would not have occasioned present writ petition. He purports to contend that as a matter of fact amendments sought are giving little more particulars about the averments in the written statement. Particularly, he refers to that in their earlier written statement they have referred to that they are not concerned with survey No. 57 while the amendments elaborated that they have not claimed right to survey No. 57. He submits that perusal of the application for amendment would reveal that paragraphs No. 3 to 7 are clarificatory in nature and those need

not be hindered under a pedantic approach. He submits that may be affidavit of examination in chief has been filed by the plaintiff, yet, one and half year thereafter has elapsed, as such, it may not be said that trial, in true sense has commenced. He submits that matters of amendments are to be given a lenient and liberal treatment as per prevailing legal position.

4. On the other hand Mr. Deshpande, learned advocate appearing for the respondent - plaintiff contends that the application has been cryptic. It does not give as to which specific portions are to be added by way of amendment. He further submits that there is no due diligence seen in making application. The same has been filed one and half year after filing of affidavit of examination in chief by the plaintiff. He submits that contents of the application tend to alter the assertions made in earlier written statements.

5. Perusal of written statement and the amendment application would show that in the additional written statement, the petitioners - defendants claim that gut No. 56 had been initially owned by father of defendants No. 1 and 2 and had been transferred on partition to Hemant and since then defendants are in possession as owner of Gut No. 56. It is referred to in additional written statement that Gut No. 57 concerns, Vitthalrao

Choudhary - uncle of defendants and defendants have no concern with said land. Amendments sought to written statement, as contained in paragraphs No. 3 to 7 of the application claim that Gut No. 56 is not ancestral property of plaintiffs and Gut No. 57 is not ancestral property of defendants. Gut No. 56 is independent and exclusive property of Shrinivasrao and his successors i.e. defendants whereas Gut No. 57 is independent and exclusive property of Vitthalrao and his successor who is plaintiff.

6. Looking at aforesaid, appreciation by trial court as would be appearing in paragraph No. 10 shows, that would not be in keeping with pleadings as would *prima facie* appear. Having regard to that amendments generally are to be construed liberally and to save further procrastination of litigation at later stages on this count, it appears to be expedient to indulge into the request being made under the writ petition, subject of course to making up of inconvenience suffered in the process by the plaintiff - respondent, by awarding certain costs.

7. As such, writ petition is allowed. Rule is made absolute in terms of prayer clauses "B" and "C", subject to payment of costs of Rs.15,000/-. Amount of costs be deposited by the petitioner - defendants in the trial court within a period of six weeks from the

date of receipt of writ of this order for its onward disbursal to the plaintiff - respondent.

Dinesh
Ramrao
Pawar

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signed by
Dinesh
Ramrao
Pawar
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[SUNIL P. DESHMUKH, J.]

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