

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION No.6341 OF 2017

Bharat S. Salve & ors.

... Petitioners

Vs.

The Collector, District Solapur & Ors.

... Respondents

Mr.S.M. Katkar i/b Ms.Manisha A. Devkar for the Petitioners

Mr.A.R. Metkari, AGP, for the Respondent Nos.1, 2 & 3

Mr.N.P. Deshpande, for Resp. No.5

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: AUGUST 1, 2018**

P.C. :

1. This petition is directed against the order dated 12.4.2017 passed by the learned Civil Judge, Senior Division, Malshiras below exhibit 55, in RCS No.15 of 2013, wherein the application for amendment of the plaint under Order 6 Rule 17 filed by the plaintiff, is rejected by the trial Court.

2. The plaintiff has filed a suit for declaration that he is the owner of the land and order dated 8.4.1949 of forfeiting the land by the government is illegal. He has also prayed for perpetual injunction. By way of application for amendment, the plaintiff

wants to bring one Mohan Kale on record as defendant No.6 and also prays that defendant No.5 has handed over the land to Mohan Kale under agreement and this agreement is illegal and, therefore, the plaintiff's possession and occupation is not to be disturbed and so respondent Nos.5 and 6 are to be enjoined from obstructing the possession of the plaintiff in the suit land.

3. The learned Counsel for the petitioner has submitted that the order passed by the learned Judge is illegal and it is only based on prima facie observation wherein the suit is filed for declaration of ownership. The learned Counsel has submitted that the plaintiff is in possession of the suit property and, therefore, the learned Counsel justifies the amendment application.

4. The learned Counsel for respondent No.5 while opposing this Writ Petition submits that the said property was forfeited by Government Resolution of 1949 as the terms and conditions of Watan land were violated. According to Respondent No.5, the ownership of the land now vests with respondent No.5. The learned Counsel for respondent No.5 submits that the plaintiff is not at all in possession of the suit land and there is no question of allowing such an amendment.

5. Heard submissions. Perused the order and the plaint; so also the amendment. From the pleadings in the plaint itself, the plaintiff has stated that he has lost the possession and the ownership and therefore, he has filed suit for declaration that he is the owner of the suit land. By way of amendment, he is presupposing that he is in possession of the suit land which is contrary to his earlier pleadings. The learned Judge has rightly observed that the proposed defendant No.6 is not a necessary party and the amendment is also not necessary for the purpose of determining the real question in the controversy between the parties.

6. In view of this, the order in question does not require any interference and accordingly, the petition is dismissed.

(MRIDULA BHATKAR, J.)