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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10162 OF 2018

Manohar B. Verma & Anr.

...Petitioners

V/s.

M/s.F.E. Dinshah Trust

...Respondent

Mr.R.M. Pande with Mr.Ashutosh Shukla I/b Mr.Dhananjay Shukla for
the Petitioners.

Mr.Bhupendra Singh for the Respondent.

CORAM : R.D. DHANUKA, J.

DATE : 18TH SEPTEMBER, 2018.

P.C. :-

1. By this petition filed under under Article 227 of the Constitution of India, the petitioners have impugned the order dated 6th November, 2017 passed by the learned Trial Judge dismissing the Chamber Summons No.872 of 2016 filed by the plaintiff *inter-alia* praying for amendment in the plaint for incorporation of an area as 9000 sq. mtrs.

2. It was the case of the plaintiff before the learned Trial Judge that the plaintiff had encroached upon the land in the year 1990 admeasuring 6191 sq. mtrs.

3. A perusal of the record indicates that the petitioners have initially filed a suit for possession in respect of the area admeasuring

2005 sq. mtrs. The plaintiffs thereafter applied for amendment by filing a chamber summons in the year 2010 to include a prayer for declaration of the alleged ownership of the plaintiffs by adverse possession. Learned Trial Judge has permitted the said amendment by passing an order in the year 2015.

4. The matter is at the evidence stage. The plaintiffs filed a fresh chamber summons for amendment to the prayer clause and to add additional area on the ground that when the affidavit of evidence was prepared, the plaintiffs came to know that they were in possession of larger area and thus sought prayer for adverse possession for the larger area.

5. Learned Trial Judge has rejected the chamber summons filed by the petitioners. In my view, the plaintiffs who have come to the Court with a case of an encroachment upon the suit land must be fully aware as to how much area they have encroached upon. Though the earlier chamber summons was filed in the year 2010, the same was filed for inclusion of an additional prayer and not for any additional area. The plaintiffs have not come to the Court with due diligence and thus on that ground also the plaintiffs cannot be allowed to seek amendment at the stage when the matter is ready for argument. The chamber summons for amendment of the plaint was thoroughly misconceived and thus the learned Trial Judge has rightly rejected the

said application for amendment.

6. The petition is devoid of merit and is dismissed with costs quantified at Rs.50,000/- which shall be paid by the petitioners to the respondent trust within three weeks from today. It is made clear that a copy of the receipt showing payment of cost shall be produced before the learned Trial Judge within one week from the date of payment. If the amount of costs as directed by this Court is not paid, the learned Trial Judge shall not proceed with the trial.

Vasant
Anandrao Idhol

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Anandrao Idhol
Date: 2018.09.25 15:20:54
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(R.D. DHANUKA, J.)