

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2053 OF 2010

Karbhari s/o Tukaram Sonawane
& others

Petitioners

Versus

Sakharam s/o Shrawan Sonawane
& others

Respondents

Mr. N.V.Gavare, Advocate for the petitioners.

Mr. Mukul S. Kulkarni, Advocate for respondents no. 1 to 6.

CORAM : M.S. KARNIK, J.

DATE : 5th August, 2019.

PER COURT :

1. Heard learned counsel for the petitioners.
2. The order under challenge is passed by the learned Civil Judge, Junior Division, Karjat, rejecting the application made by the plaintiffs for amendment of the plaint. The application was made below Exhibit 67.
3. The suit is of the year 2003. The suit was filed for permanent injunction restraining the defendants from interfering with the peaceful possession of the plaintiffs over the suit property.
4. After the issues were framed and after commencement of evidence of plaintiffs, an application Exhibit 67 was filed for carrying out amendment in the plaint in view of the subsequent events. One of the reliefs sought in the amendment application

was for declaring the decision of the revenue authorities as null and void. The other relief sought by way of amendment was declaration of plaintiffs' ownership over the suit property which, according to the plaintiffs, was the ancestral property.

5. The said amendment was made at a belated stage and the trial Court was of the opinion that the amendment, if allowed at this stage, would change the nature of the suit. Initially, the suit was filed for injunction but now, in view of the amendment, plaintiffs are seeking declaration of ownership. In this view of the matter, the trial Court was of the opinion that if amendment is allowed, it would convert the main relief of permanent injunction into an ancillary relief and would be substituted with declaratory relief. Moreover, insofar as the relief for declaring the orders passed by the revenue authorities as null and void is concerned, such declaration cannot be granted by the trial Court, was the view taken by the trial Court.

6. I find the application filed by the plaintiffs to be belated. Moreover, by seeking declaration of ownership, the nature of the suit would change. In this view of the matter, I see no reason to interfere with the order passed by the trial Court.

7. Considering that the matter is of the year 2003, the trial Court is requested to decide the suit as expeditiously as possible.

8. Writ petition is rejected.

(M.S. KARNIK, J.)

dyb/