

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL APPLICATION NO.9920 OF 2018
IN CRA/163/2015

PANDIT SONUSING PATIL AND OTHER
VERSUS
KASTURABAI VYANKAT KUMBHAR AND OTHER

...

Advocate for the Applicants : Ms.Kalyani Deshmukh h/f Shri Patil Pradip
R..

Advocate for Respondents 1 to 5 : Zareef Khan Pathan.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 04th February, 2019

Per Court:

1 The Applicants, who have preferred the Civil Revision Application, pray for leave to add one paragraph 12-A and two prayer clauses A-1 and A-2 as proposed in the Civil Application, in the Civil Revision Application. The grievance is that the Respondents need to be directed to refrain from making any construction in Survey No.509/A and if there is any such illegal structure standing, the same needs to be demolished and they should peacefully hand over the property.

2 The learned Advocate for the Respondents strenuously opposes this application and relies upon the detailed affidavit in reply filed by Shri Kailas Kumbhar dated 28.08.2018. The grievance is that the

property as regards which the injunction is desired through the proposed prayer clauses, has not been clearly identified. The prayer clauses are vague and ambiguous. The Respondents have handed over the properties to the Applicants and the dispute has been brought to an end after giving physical possession of 5 R land of Survey No.509/A/1/1/1, on 23.03.2018. Handing over of the property is through the learned Civil Court, Chalisgaon pursuant to the order dated 20.02.2017 passed in Civil Revision Application No.163/2015, by this Court.

3 In my view, it is settled law that when it comes to an amendment, the merits of the amendment are not to be scrutinized. An amendment is normally to be considered liberally unless the nature of the cause of action is drastically changed and for which a separate suit or proceeding would be barred by limitation.

4 I find that the Applicants are praying for injunction against the Defendants and are further praying that if there is an illegal construction in Survey No.509/A at the behest of the Respondents, the same should be prevented. Whether, the Respondents are constructing in their own area or whether, they are erecting the construction in the area belonging to these Applicants, is an issue which will be considered while deciding C.R.A. No.163/2015. This would not be the stage at which these issues can be gone into.

5 In view of the above, this Civil Application is allowed. The

Applicants shall add prayer clauses A-1 and A-2 and paragraph 12-A to the Civil Revision Application within three weeks from today. The Respondents in the Civil Revision Application are at liberty to file their additional affidavit in reply, if any, within five weeks from today.

6 List the Civil Revision Application on 18.03.2019. Until then, the ad-interim order passed on 10.08.2018 in Civil Application No.9921/2018 would continue.

kps

(RAVINDRA V. GHUGE, J.)