

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

10 WRIT PETITION NO.8038 OF 2016

MANOJ BHAUSAHEB MACCHINDRE AND ANOTHER
VERSUS
SAU JANABAI PANDIT KESBHAT AND OTHERS

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Advocate for Petitioners : Mr. Gaware Niteen V.
Advocate for Respondent No.2: Mr. S. S. Bora

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**CORAM : V. K. JADHAV, J.
DATED : 18th NOVEMBER, 2019**

PER COURT :-

1. This is against the rejection of an application filed by the petitioners - original defendants under Order-VI Rule-17 of the Code of Civil Procedure for amendment in their written statement.

2. Learned counsel for the petitioners - original defendants submits that in Paragraph No.16 of the written statement, the petitioners have given reference to the proceedings before Tahsildar, Shrigonda and also to the order passed by the Tahsildar, Shrigonda on 15.03.2005. Learned counsel submits that amendment as sought is clarificatory in nature. No new ground is inducted by way of proposed amendment. Learned counsel submits that in Paragraph No.3 of application Exhibit-40, the petitioners have given details of the proposed amendment. The petitioners have given reference in detail to the proceedings pending before the Tahsildar and the final order passed in the said proceedings by

Tahsildar, Shrigonda. Learned counsel submits that the Court has given unnecessary reference to the commencement of the trial. The matter came to be remanded by the District Court for adducing evidence by the petitioners original defendants. The proposed amendment would not change the nature of the pleadings. The learned Judge of the trial court ought to have allowed the said application Exhibit-40.

3. Learned counsel for the respondent - original plaintiff submits that the proposed amendment would change the nature of the pleadings. After cross-examination of the plaintiff and his witnesses and after certain admissions given by the plaintiff and his witnesses in respect of the said proceedings pending before the Tahsildar, the petitioners - original defendants, with some ulterior motive, proposed this amendment. The trial Court has rightly rejected the said application i.e. application Exhibit-40. There is no substance in this writ petition and the same is thus liable to be dismissed.

4. On careful perusal of the written statement filed by the petitioners - original defendants, in Paragraph No.16, the petitioners have given a specific reference to the proceedings before the Tahsildar and the final order passed by Tahsildar, Shrigonda on 15.03.2005 in connection with some part of the suit property. I have also perused the contents of the application Exhibit-40. In terms of the contents of application

Exhibit-40 particularly, paragraph no.3, it appears that the petitioners have given details of the said pending proceedings and the final order passed in the said proceedings by Tahsildar, Shrigonda. Thus, the basic pleadings are there in respect of the said proceedings and the final order passed by the Tahsildar. I do not think that the petitioners have introduced any new ground. The trial Court ought to have granted application Exhibit-40.

5. Learned counsel for the respondent at this stage submits that the suit is old one and the trial Court may be directed to dispose of the suit as expeditiously as possible in a time bound manner.

6. Learned counsel for the petitioners, on instructions, submits that the petitioners are having no objection for such directions. Hence, the following order:

ORDER

- a) The writ petition is hereby allowed.
- b) The impugned order dated 16.06.2016 below Exhibit-40 passed by the Joint Civil Judge, Senior Division, Shrigonda in R.C.S No. 181 of 2006 is hereby quashed and set aside.
- c) The application Exhibit-40 is hereby allowed in terms of its prayer clause, subject to costs of Rs.5000/- to be

paid to the respondents within three weeks from today before the court below.

d) The trial court shall dispose of the pending suit as expeditiously as possible, preferably within a period of one year.

e) The writ petition is accordingly disposed off.

(V. K. JADHAV, J.)

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