

BDP-SPS

Bharat
D. Pandit

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8248 OF 2017**

Sampat Shivram Makune and Others Petitioners

V/s

Bhausahab Radhaji Makune and Others Respondents.

Mr. Vishwajeet S. Kapse for the Petitioner.

Mr. Anilkumar Patil for Respondent Nos. 1 and 3.

CORAM: NITIN W. SAMBRE, J.

DATE: OCTOBER 10, 2019.

P.C.:-

1] Rule. Rule is made returnable forthwith. Respondents waive service. Heard finally by consent of parties.

2] Application-Exhibit-47 in a suit for injunction initiated by the Petitioners-Plaintiffs has been rejected by the impugned order dated 27/1/2017.

3] The submissions are, amendment sought is based on the subsequent development, which fact the learned Trial Court failed to appreciate.

4] While opposing the contention, the learned Counsel for Respondents-Defendants would urge that, initially, the suit for injunction is sought to be converted into declaration and possession both. Apart from the issue of limitation, he would submit that the amendment is by virtue of subsequent development which changes the entire nature of the action which is sought to be espoused.

5] Considered the rival submissions.

6] Stage of the suit is for submission of examination-in-chief of the Plaintiffs.

7] Having regard to the above and as the pleadings which are sought to be amended are based on subsequent development, in my opinion, amendment needs to be allowed, subject to payment of costs of Rs 3,000/- to be deposited by the Petitioners-Plaintiffs in the Trial Court within a period of two weeks from today to which Defendants would be entitled to.

8] The order impugned is quashed and set aside. Petition is allowed in the aforesaid terms and the Rule is made absolute accordingly.

9] Needless to clarify that this Court has not appreciated the merits of the suit and all the contentions are kept open.

(NITIN W. SAMBRE, J.)