

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4007 OF 2014***

Shri. Ashok Shambihari Agarwal & Ors. ... Petitioners

Vs

Shri. Chandrakant Nathu Jadhav & Ors. ... Respondents

Mr. K.S. Dewal i/b. Jayesh Joshi, Advocate for Petitioners.
Mr. M.A. Kale i/b. Mr. Sagar A. Joshi Advocate for Respondents
No. 1 to 7, 9 & 10.

CORAM : SANDEEP K. SHINDE J.

DATE : June 4th, 2019

P.C. :

1. Heard both sides.
2. Petitioners, are the plaintiffs in Regular Civil Suit No. 1512 of 2012, pending in the Court of Civil Judge (S.D) at Thane wherein they are seeking decree of restraint against the defendants from dispossessing them from the suit land/ property. Pending the suit, the Learned Judge directed the parties to maintain the status quo.
3. On 20.12.2013, plaintiffs filed an application under Order 6 Rule 17 read with Section 151 of the Civil Procedure Code, 1908 to amend the plaint, in terms of Annexure 'A' appended thereto and to implead Revenue Officers as party defendants. Well before filing the said application, on 09.12.2013 plaintiffs had issued a notice to

Tahsildar Thane, Circle Officer and Talathi, Thane in terms of Section 80 of Civil Procedure Code, 1908. Learned Judge rejected the application on the ground that, Public Officer cannot be impleaded as defendants, unless notice under Section 80(1) of Civil Procedure Code, 1908 is served or delivered at their office. Learned Judge thus observed that *“Without sending them notice, no suit shall be instituted against them”*.

4. Copy of the notice delivered at the Office of Circle on 09.12.2013 is at Page no. 48 of the writ compilation. The impugned order has been passed two months after notice has been delivered.

5. The petitioners/ plaintiffs are seeking to implead Revenue Officers, as defendants, as they were apprehending dispossession from the suit property at the hands of defendants in collusion with Revenue officers.

6. Suit lands are Tribal-lands. Proposed amendment suggest, Revenue Officers had visited the suit lands and inquired into. Proposed scheduled, amendment suggest petitioners were apprehending dispossession from the suit lands by the defendants with the help of revenue officers. Amendments is thus sought on the basis of subsequent event. In fact, impleadment of Revenue Officers would assist the Court to arrive at just decision, being suit lands are tribal-lands, in forest. Even otherwise, order impugned has been passed two months after the delivery of notice under Section 80(1) of the CPC at the office of Revenue Officers. The text of proposed

amendment would not result in introducing new cause of action nor it intends to prejudice the other party.

7. In view of the facts of the case and for the reasons stated hereinabove, order dated 12.03.2014 is quashed and set aside and application below Exhibit 53 in Regular Civil Suit No. 1512 of 2012 is allowed.

8. Petitioner plaintiffs shall carry out the amendment within two weeks from the date of uploading this order on the website.

9. All to act upon the authenticated copy of this order.

10. Petition is allowed in the aforesaid terms and disposed of accordingly.

(SANDEEP K. SHINDE, J.)