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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 9578 OF 2018

Shevanti Ladkya Bamne & ors. ..Petitioners

vs.

Maharashtra Housing and Area
Development Authority & ors. ..Respondents

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Shri V.V. Salunke a/w. Shri V.M. Punjabi for petitioners.

Shri Kamlesh Ghumre for respondent No.3.

Shri T.D. Deshmukh for respondent Nos. 1 and 2.

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CORAM : M.S.KARNIK, J.

DATE : 28th AUGUST, 2019

P.C. :

Heard learned counsel for the petitioners.

2. The petitioners are original plaintiffs. The petitioners filed the suit against respondent Nos. 1 and 2 for injunction. Later on respondent No.3 claimed that by virtue of a joint venture agreement executed between respondent Nos.1, 2 and 3, the respondents are in possession. Respondent No.3 therefore sought impleadment which came to be allowed. The scheme implemented by MHADA is Public Affordable Housing Scheme.

3. The petitioners by filing application Exhibit 47 before the trial Court prayed that he may be allowed to amend the suit. The petitioners prayed for exhaustive amendments. Essentially the petitioners by an amendment prayed that he may be allowed to claim relief of declaration that the joint venture agreement dated 13/8/2009 is null and void. Further declaration is sought that the defendants have no right, title and interest in the suit property held by plaintiffs and that defendants have no right to interfere/disturb peaceful possession, occupation and enjoyment of suit properties. The plaintiffs also prayed for a direction to the defendants to remove encroachment done by them on plaintiffs' suit lands and restore the land to its original position.

4. The said application is vehemently opposed by the defendants. The trial Court partly allowed the application in terms of the order dated 4/8/2017. However, in so far as proposed amendment regarding “declaration regarding the removal of encroachment, further declaration that the

defendants have no right, title and interest over the suit lands, declaration about the joint venture agreement being null and void”, the trial Court has not given any reasons while rejecting the application.

5. Learned counsel for the respondents supported the order passed by the trial Court. One of the submission is that amendment is hopelessly time barred.

6. Be that as it may, after going through the impugned order I find that the trial Court has not given any reasons while rejecting the application for amendment in so far as the declaratory reliefs are concerned. In this view of the matter, I am of the opinion that the application Exhibit 47 needs to be reheard. However to the extent the order dated 4/8/2017 allows the application the order is maintained. The application Exhibit 47 to be reheard to the extent indicated herein above. The trial Court to consider the application Exhibit 47 on its own merits and decide the same afresh.

7. The Petition is partly allowed with no order as to costs. The impugned order is partly set aside.
8. The parties to appear before the trial Court on 16th September, 2019.
9. All contentions are kept open.
10. It is made clear that I have not gone into the merits of the application for amendment and all contentions are kept open.

(M.S.KARNIK, J.)