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IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION******WRIT PETITION NO.447 OF 2018***

Chandrakant Kashiram Jadhav (since
deceased) through LRs. & Ors. ..Petitioners.

V/s.

Grampanchayat Terye & Ors. ..Respondents.

Mr.Bhuhan Walimbe for the petitioners.

Smt. Seema Nalawade for respondent Nos.5 to 7, 9 to 18, 20
& 21.

CORAM : NITIN W.SAMBRE, J.

DATE : OCTOBER 15, 2019

P.C. :-

Heard respective counsel.

2. The petitioners-plaintiffs in Regular Civil Suit No. 287/2012 are seeking permanent injunction, possession, etc. In the suit, initially four defendants were impleaded. However, subsequent thereto, the petitioners moved an application Exhibit-143 under Order 1 Rule 8 of the Code of Civil Procedure ('the CPC' for short) and application at Exhibit-145 under Order 1 Rule 10 of the CPC. According to the petitioners, they have also moved an application for

amendment under Order VI Rule 17 of the CPC being Exhibit-141,

3. Learned counsel for the petitioners, while questioning the order passed below Exhibits-143 and 145 i.e. applications under Order 1, Rule 8 and Order 1 Rule 10 of the CPC, would urge that the pleadings against the proposed defendants who were sought to be impleaded is spelt out in application Exhibit-141. He would urge that in Exhibit-141, though there is a reference made to 300 villagers who are residing within the jurisdiction of defendant No.1 Grampanchayat Terye, however, by way of symbolic representation, only the names of 21 defendants is sought to be added. According to him, corresponding pleadings and reliefs in support of above are already incorporated at Exhibit-141. Learned counsel would urge that without deciding Exhibit-141 and without considering repercussion of the pleadings in Exhibit-141, applications below Exhibits-143 and 145 are rejected. He would invite attention of this Court to the reasons furnished in the order impugned, which according to him are not in consonance with the pleadings in Exhibit-141 seeking amendment. As such, according to him, the order impugned is not sustainable and the same is liable to be

quashed and set aside with direction to decide Exhibit-141 i.e. applications together.

4. Learned counsel for the respondents supports the order impugned and would urge that even the application Exhibit-141 is liable to be rejected pursuant to the impugned order which is passed below Exhibits-143 and 145.

5. Considered rival submissions. This Court in view of submission of the petitioner-plaintiff, proceeded to examine the impugned orders and also Exhibit-141 i.e. application for amendment.

6. The suit came to be initiated by the petitioners against Grampanchayat, Zilla Parishad, Tahsildar and one Sanjay Narayan Patole i.e. defendant Nos.1 to 4 respectively. According to the petitioner-plaintiff, the suit property is in his possession and by virtue of principles of adverse possession, they became owners of the same. According to them, the dispossession is by defendants, including about 300 villagers.

7. If the pleadings in the plaint are perused, but for the vague pleadings against the persons other than the defendant Nos.1 to 4, this Court hardly notices any specific pleadings or attributions so as to derive a cause of action against the proposed defendants or alleged 300 villagers.

8. In the aforesaid backdrop, having appreciated the pleadings in the plaint, the role played by each alleged proposed defendants, cause of action against them, in my opinion, the order of rejection passed below Exhibits-143 and 145 appears to be just and proper which does not warrant any interference in the supervisory jurisdiction.

9. This takes me to the next submission of the respondents that, in view of the order impugned, application Exhibit-141 preferred under Order VI Rule 17 of the CPC is also liable to be rejected or deemed to be rejected. Though learned counsel for the petitioners has urged that the said application should have been decided independently and prior to applications Exhibits-143 and 145. However, even if this Court considers the cumulative effect of all three applications Exhibits-141, 143 and 145 in the backdrop of the pleadings in the plaint, having already observed that no cause of action as against the proposed defendants is disclosed, the said application Exhibit-141, in my opinion, is also be liable to be rejected and is rejected accordingly.

10. For the aforesaid reasons, the petition fails and is dismissed.

(NITIN W.SAMBRE, J.)