

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

904 WRIT PETITION NO. 2649 OF 2005

SONABA S/O TULSHIRAM PACHPUTE
VERSUS
ARUN S/O KASHINATH PACHPUTE AND ANOTHER

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Advocate for Petitioner : Mr. N. V. Gaware
Advocate for Respondent Nos. 1 and 2 : Mr. V. P. Latange

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CORAM : V. K. JADHAV, J.
DATED : 23rd JANUARY, 2020

ORDER :-

1. Heard both sides.
2. By order dated 20.04.2005, this Court has granted stay to the further proceedings in Regular Civil Suit No. 46 of 1997 pending in the Court of Civil Judge, Junior Division, Shrigonda. Thereafter, by order dated 23.03.2006, while granting Rule, this Court has continued the ad-interim relief in terms of prayer clause "D" till then (till disposal of the Writ Petition). It is not clear as to how the suit came to be disposed off on 24.06.2008 by the trial court.
3. Assuming that the suit is still pending, I find no merits in this Writ Petition. The respondents/plaintiffs have instituted the suit

bearing Regular Civil Suit No. 46 of 1997 for a decree of perpetual injunction. Pending suit, the respondents/plaintiffs have filed an application Exhibit 64 for insertion of the relief of possession of the encroached portion. It is the case of the respondents/plaintiffs that during pendency of the suit, the petitioner/defendant has caused encroachment over the suit property. The trial court, by order dated 01.02.2005, allowed the said application. Hence this Writ Petition.

4. Learned counsel for the petitioner/original defendant submits that both the parties have adduced oral and documentary evidence in support of their rival contentions and also passed the 'evidence closed' pursis. Learned counsel submits that when the trial court has kept the matter for final arguments, the respondents/plaintiffs have filed the application Exhibit 64 for carrying out the amendment. Learned counsel submits that the respondents/plaintiffs have sought the amendment at a belated stage and the trial court ought to have rejected the said application seeking amendment. Learned counsel placed reliance in the case of ***Arjun Sinha v. Mohindra Kumar And others***, reported in **AIR 1964 SC 993**, wherein the Apex Court has laid down that the application

seeking amendment in the plaint is not maintainable when the matter is fixed for final hearing.

5. Learned counsel for the respondents/plaintiffs submits that during pendency of the suit and after closing of the evidence by the parties, the petitioner/defendant has made encroachment over the suit property and as such, the respondents/plaintiffs were constrained to file an application seeking amendment in the plaint and insertion of the prayer for recovery of the encroached portion of the suit land. The trial court has rightly passed the impugned order. No interference is required. The Writ Petition may be dismissed.

6. Even though the Hon'ble Supreme Court, in the facts of the aforesaid case, has laid down that when the matter is fixed for hearing, the application seeking amendment should not be entertained, however, in the instant case, in order to avoid multiplicity of the litigation, the respondents/plaintiffs have carried out the amendment in the pending suit. The respondents/plaintiffs have instituted the suit for a decree of perpetual injunction and if the encroachment has been made during pendency of the suit, it

would be unjust directing the respondents/plaintiffs to institute a separate suit for recovery of the encroached portion. In view of the same, I am not inclined to interfere in the impugned order passed by the trial court. If the suit is pending, the trial court shall dispose it off on priority basis in a time bound manner. Hence, I proceed to pass the following order:

ORDER

- I. The Writ Petition is hereby dismissed.

- II. The trial court shall dispose off Regular Civil Suit No. 46 of 1997, if it is pending in the file of the Civil Judge, Junior Division, Shrigonda, as expeditiously as possible, preferably within a period of one year from the date of this order.

- III. The Writ Petition is accordingly disposed off. Rule discharged.

(V. K. JADHAV, J.)

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