IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

905 WRIT PETITION NO.1433 OF 2005
WITH CA/1291/2020 IN CA/9416/2017

1. Jaywant s/o Harji Gunjal Patil
Age 66 years, Occ. Agri.,
R/o. Devigalli, Sangamner,
Tq. Sangamner, Ahmednagar

2. Keruji Harji Gunjal Patil,
Age 48 years, Occ. Agril,
R/o. As above

3. Rajendra s/o Keruji Gunjal Patil
Age 34 years, Occ. Agri.,
R/o. As above

4. Sow. Mangal Ashokrao Sawant Inamdar
Age 45 years, Occ. Household
Through its GPA petitioner No.2.

5. Hemant Ulhasrao Pawar
Age 33 years, Occ.
R/o. Devigalli, Sangamner
Tq. Sangamner, Dist. Ahmednagar

6. Sow. Sushilabai Jaywant Gunjal
Age 62 years, Occ. Household ...Petitioners
R/o. As above (Ori. Deft. 1, 2, 4, 7, 8 and 9)

versus

1. Shivshankar Uday Gunjal
Age minor, u/g of her real mother
Sow. Vidhyulata Uday Gunjal

2. Sow. Vidhyulata Uday Gunjal
Age 42 years, Occ. Household
R/o. Devi Galli, Kasba Peth
Sangamner, Tq. Sangamner
District Ahmednagar (Ori. Plaintiffs)

3. Uday Keruji Gunjal
Age 46 years, Occ. Agril.,
R/o. As above

4. Saranga d/o Uday Gunjal
Age 20 years, R/o. As above

5. Swarupa d/o Uday Gunjal ...Respondents
Age 18 years, R/o. As above (Ori. Defendants)

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Advocate for Petitioners : Mr. A S Bajaj and S P Adgaonkar
Advocate for Respondent Nos. 1 and 2 : Mr. A.Z. Gandhi

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CORAM : V. K. JADHAV, J.
DATED : 6th FEBRUARY, 2020

ORAL JUDGMENT:-

1. Heard both sides.

2. Respondent Nos. 1 and 2 have instituted suit for declaration and decree of perpetual injunction in respect of suit properties. During pendency of the suit, respondent Nos. 1 and 2 original plaintiffs have filed an application Exh.138 under Order VI Rule 17 of C.P.C. for amendment in the plaint. The petitioners herein have strongly resisted the said application. However, the learned Judge of the trial court by impugned order dated 6.12.2001 below Exh.138 in Special Civil Suit No. 137 of 1994 allowed the said application seeking amendment subject to payment of costs of Rs.200/-.

3. Learned counsel for the petitioners-original defendant Nos. 1, 2, 4, 7, 8 and 9, on instructions, submits that the petitioners restrict this petition to the extent that under the garb of this amendment, respondent Nos. 1 and 2-original plaintiffs shall not adduce additional oral and documentary evidence so as to fill up the lacunae since the application Exh.138 seeking amendment under Order VI Rule 17 of C.P.C. came to be filed after the plaintiffs' evidence is over.

4. Learned counsel for respondents Nos. 1 and 2 original plaintiffs,

on instructions, submits that as observed by the trial court the amendment as sought by way of filing application Exh.138 is clarificatory in nature and to elaborate the contentions raised in the plaint and amended as per the previous amendment carried out by the respondents-original plaintiffs under the orders of the Court and as such, respondent Nos. 1 and 2-original plaintiffs would not make any attempt to adduce additional oral and documentary evidence or to re-examine plaintiffs or the witnesses. Learned counsel submits that after the first amendment is carried out, the respondents-plaintiffs have adduced oral and documentary evidence and since the amendment as sought vide application Exh.138 is clarificatory in nature and in order to elaborate the contentions already brought on record through the earlier amendment, there is no need to adduce additional oral or documentary evidence.

5. In view of above, since the apprehension expressed by the learned counsel for the petitioners is no more exists, this writ petition can be disposed of on the basis of the statement made on behalf of the respondents-original plaintiffs. Order accordingly.

6. Needless to say that the order stands confirmed as it is. Writ petition is accordingly disposed of. Rule discharged.

7. Pending civil application No. 1291 of 2020 is also disposed of.

(V. K. JADHAV, J.)

rlj/