

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

17 WRIT PETITION NO. 12517 OF 2019

ANNASAHEB BHAUSAHEB LABDE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioners : Mr. Kale Ajeet B.
AGP for Respondent Nos. 1 to 3-State : Mr. A. B. Chate
Advocate for Respondent Nos.4 & 5 : Mr. R. R. Karpe

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CORAM : V. K. JADHAV, J.
DATED : 20th JANUARY, 2020

ORDER :-

1. Heard finally with consent at admission stage.
2. I find no substance in this Writ Petition. The petitioners are the original defendants. Respondent nos. 4 and 5 herein have instituted the suit bearing Regular Civil Suit No. 104 of 2016 for declaration, possession and a decree of perpetual injunction. In the pending suit, respondent nos. 4 and 5/original plaintiffs have filed an application Exhibit 33 under Order VI Rule 17 of C.P.C. seeking amendment in the plaint. The trial court by order dated 08.07.2019 passed below Exhibit 33 in Regular Civil Suit No. 104 of 2016, allowed the said application with costs. Hence this Writ Petition.

3. Learned counsel for the petitioners submits that the entire nature of the suit has been changed by the proposed amendment. Learned counsel submits that by way of the proposed amendment, the respondents/plaintiffs are trying to withdraw the vital admissions. Learned counsel submits that the suit came to be instituted on the basis of the notice given to the State of Maharashtra under Section 80 of C.P.C. and as such, the respondents/plaintiffs cannot be permitted to amend their pleadings beyond the contents of the notice under Section 80 of C.P.C. The trial court has not considered the same and allowed the application Exhibit 33.

4. Learned counsel for respondent nos. 4 and 5/plaintiffs submits that the respondents/plaintiffs had engaged a counsel for drafting and presenting the suit. However, later on they noticed that the counsel has not correctly drafted the suit and he has pleaded most of the unwanted things in the suit. In consequence thereof, respondent nos. 4 and 5/original plaintiffs engaged another Advocate. The said new counsel also noticed that the facts pleaded in the suit are insufficient to clarify the dispute in question

and the facts pleaded are also ambiguous and not clear. It is also noticed by the new counsel that the facts pleaded earlier are unnecessary facts which would create confusion and complications. Learned counsel submits that the proposed amendment would not change the nature of the suit and the trial of the suit is yet not commenced. Even the issues are yet to be framed in the matter. Learned counsel submits that the proposed amendment would help the court for taking just decision in the suit. Learned counsel submits that the proposed amendment is explanatory and clarificatory in nature. The trial court has thus rightly allowed the application Exhibit 33. There is no substance in the Writ Petition and the Writ Petition is liable to be dismissed.

5. I have perused the contents of the plaint, so also the application Exhibit 33 seeking amendment in the plaint. I have also perused the written statement filed by the petitioner/defendants and their say to the application Exhibit 33. On perusal of the contents of the application Exhibit 33, it appears that most part of the proposed amendment is formal in nature and to cure the defects at the stage when the trial of the suit is yet not commenced. Apart from this, it appears that there is a basic pleading about the

family genealogy and so also as to who was looking after the entire affairs of the family. It further appears that certain contents of the plaint sought to be deleted by way of the proposed amendment, is in fact not the admissions but it appears to be the facts leading to confusion and complications. So far as the merits of the proposed amendment are concerned, the same cannot be considered at the stage of allowing the application seeking amendment in the plaint. The petitioners/defendants are at liberty to file an additional written statement, if so desired, and it is for the trial court to consider the merits during the full-fledged trial of the suit. In view of the same, I do not find any fault in the impugned order. Hence, I proceed to pass the following order:

ORDER

- I. The Writ Petition is hereby dismissed.

- II. Rule discharged.

(V. K. JADHAV, J.)

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