

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

931 WRIT PETITION NO.14729 OF 2019

FIROJKHAN SULEMANKHAN AND ANOTHER
VERSUS
JAIKUMAR MULCHAND GANDHI AND OTHERS

.....
Advocate for Petitioners : Mr. Bide Dnyaneshwar A
Advocate for Respondent Nos. 1 and 2 : Mr. L.B. Palod
.....

CORAM : V. K. JADHAV, J.
DATED : 15th JANUARY, 2020

PER COURT:-

1. Leave to replace page No.72.
2. With consent, heard finally at admission stage.
3. The petitioners are the original defendants. The respondent Nos. 1 and 2 herein have instituted Regular Civil Suit No. 328 of 2018 for decree of perpetual injunction. The petitioners-defendants have strongly resisted the suit by filing written statement. Pending the suit, the respondents-original plaintiffs have filed an application Exh.25 seeking amendment in the plaint. By impugned order dated 27.06.2019 passed by the 9th Joint Civil Judge, Senior Division, Ahmednagar, below Exh.25 in R.C.S. No. 328 of 2018, allowed the application. Hence, this writ petition.
4. Learned counsel for the petitioners submits that the trial court has not considered the pendency of suit bearing R.C.S. No. 280 of

2018 instituted on earlier occasion by the petitioners against the respondent Nos. 1 and 2 for decree of perpetual injunction in respect of CTS No. 3853 and 3855/Municipal House No. 3948. Learned counsel submits that in addition to this, there is decree in favour of respondents-plaintiffs in respect of CTS No. 3853/A passed in R.C.S. No. 366 of 2003. Learned counsel submits that the respondents-plaintiffs have not filed the said application within limitation and if proposed amendment is allowed that would entirely change the nature of suit. However, the trial court has not considered the same and erroneously allowed the application Exh.25.

5. Learned counsel for respondent Nos. 1 and 2-original plaintiffs submits that as per the proposed amendment in terms of new para 4-A, the respondents-plaintiffs have pleaded that during pendency of the suit and by taking advantage of rejection of application Exh.5 filed by respondent Nos. 1 and 2 for issuance of temporary injunction order, the petitioners-defendants have illegally dispossessed the respondents-plaintiffs from the suit property and therefore, they have proposed the amendment seeking relief of mandatory injunction for restoration of possession. Learned counsel submits that owing to this subsequent event, the respondents-plaintiffs have filed an application for amendment and in any manner that would not change the nature of the suit. The respondents-plaintiffs are entitled to seek relief for their illegal dispossession and as such, they have proposed the amendment in the plaint. Learned

Judge of the trial court has rightly allowed the application Exh.25. There is no substance in the writ petition and the writ petition is liable to be dismissed.

6. On perusal of the contents of application Exh.25, it appears that the respondents-plaintiffs have specifically contended in the application Exh.25 seeking amendment in the plaint that by taking undue advantage of rejection of application filed by the respondents-plaintiffs for temporary injunction by the trial court, the petitioners-defendants have dispossessed them from the suit property. It has also contended in the said proposed amendment that the respondents-plaintiffs have filed complaint on 14.2.2019 with the Corporation to that effect and also with the Police and the Collector. Learned counsel for the petitioners has given reference to the earlier decree passed in R.C.S. No. 366 of 2003 so also the institution of R.C.S. No. 280 of 2018. However, the trial court has rightly observed in para 8 of the impugned order that at the time of allowing the amendment, the merits of the pleadings and the contention cannot be considered. It is for the respondents-plaintiffs to substantiate their subsequent cause of action by adducing cogent and reliable evidence. I do not find any error in the impugned order passed by the 9th Joint Civil Judge, Senior Division, Ahmednagar. There is no substance in this writ petition. All points are kept open to the petitioners-defendants to contest the suit on merits. Hence, I proceed to pass the following order:-

O R D E R

- I. Writ petition is hereby dismissed.
- II. Needless to say that the petitioners are at liberty to file additional written statement to the amendment in terms of the proposed amendment in application Exh.25, if so desire.
- III. All points are kept open to the petitioners-original defendants to contest the suit on merits.

(V. K. JADHAV, J.)

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