

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

929 WRIT PETITION NO.1723 OF 2019

CHANDRAKALA SHESHRAO SARODE AND ANOTHER
VERSUS
SANDIP MACHINDRA KARALE AND OTHERS

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Advocate for Petitioners : Mr. Pathan Zafar M.
Advocate for Respondent Nos.1 & 2 : Mr. Kulkarni Mukul S.

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CORAM : V. K. JADHAV, J.
DATE : 04.03.2020

PER COURT :-

1. Heard finally with consent at admission stage.
2. The petitioners are original defendant Nos.2 and 3. The respondents-original plaintiff Nos.1 and 2 have instituted the suit bearing Regular Civil suit No.280 of 2007 for partition, separate possession and declaration pertaining to sale deed, as not binding on them. In response to the suit summons, the petitioners had appeared in the suit and resisted the suit by filing the written statement. Pending suit, the petitioners have filed their application under Order VI, Rule 17 of the Civil Procedure Code for amendment in the written statement. The learned Civil Judge Senior Division, Newasa by order below

Exh.95 dated 15.10.2018 rejected the application. Hence, this Writ Petition.

3. The learned counsel for the petitioners submits that the amendment as sought is formal and clarificatory in nature. The learned counsel submits that the proposed amendment would not cause any prejudice to the plaintiff's case. The learned counsel submits that the petitioners have instituted the Regular Civil Suit No.220 of 2007 against respondent No.3 herein for decree of perpetual injunction in respect of the same suit property and pending the said suit filed similar application Exh.77 for carrying out the amendment in the plaint with the similar contents. The Trial Court by order dated 16.08.2012, below Exh.77 in said Regular Civil Suit No.220 of 2007 allowed the said application seeking amendment. In both the suits the trial has been commenced, however, while allowing the application Exh.77 in Regular Civil Suit No.220 of 2007 the Trial Court has allowed the said amendment even though the trial is commenced for the reason that the nature of the suit is not going to be changed and the evidence of the plaintiffs have just been commenced. In the instant case, the learned counsel submits that the state of the suit is almost same, however, the

Trial Court has rejected the application.

4. The learned counsel for the respondents-plaintiffs submits that the proposed amendment would entirely change the earlier defence raised by the petitioners. The Trial Court has rightly rejected the application Exh.95. The application came to be filed after the commencement of the trial and the Trial Court has rightly rejected the same. No interference is required.

5. I have carefully gone through the contents of the application Exh.95. It appears that the proposed amendment is formal and clarificatory in nature. It would hardly cause any prejudice to the plaintiff. It is also not disputed that the petitioners herein have instituted the another suit in respect of the same property for decree of perpetual injunction against respondent No.3 herein and in that suit filed application Exh.77 for amendment with the similar contents. The Trial Court has allowed the said application, however, the application filed by the same parties in the present suit. The learned Trial Judge has rejected it. Thus, considering the entire aspect of the case, I am inclined to allow this Writ

Petition. Hence, I proceed to pass the following order :

ORDER

- (i) The Writ Petition is hereby allowed.
- (ii) The impugned order dated 15.10.2018 passed by the Civil Judge Senior Division, Newasa in Regular Civil Suit No.280 of 2007 below Exh.95 is hereby quashed and set aside.
- (iii) Application Exh.95 is allowed in terms of its prayer clause in its entirety.
- (iv) Writ petition is accordingly disposed off.

(V. K. JADHAV, J.)

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vmk/-