

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2936 OF 2020

Balasaheb s/o Hanumant Hole, Deceased
through Lrs.

...Petitioners

Versus

Balasaheb s/o Kisan Shelke and Ors.

...Respondents

.....
Mr. Rahul A. Tambe, Advocate for Petitioners

.....

CORAM : R. G. AVACHAT, J.

DATE : 04-02-2021.

ORDER :

01. Heard.

02. The challenge in this writ petition is to the order dated 18.9.2018 passed by learned Joint Civil Judge, Junior Division, Rahata, below Application (Exh. 29) in Civil Suit No. 462/2014. It was an application for amendment of the written statement. Learned Judge has allowed the same. The plaintiffs have, therefore, preferred this writ petition against the said Order.

03. Mr. R.A.Tambe, learned Counsel for the petitioners, would submit that the affidavit of evidence

of the plaintiffs has been filed, as such hearing of the suit has commenced. The Trial Court ignored the proviso to Order VI Rule XVII of the Code of Civil Procedure. By amending the written statement an altogether new ground has been set up. The same is inconsistent with the stand taken in the original written statement.

04. It is a suit for specific performance of agreement for sale of agricultural land described in the suit. By amendment of the written statement, a ground of limitation is being raised contending that the suit is not within limitation. Needless to mention that even if such a ground is not raised in the written statement, by virtue of Section 3 of Limitation Act although limitation has not been set up as a defence, every suit filed after the prescribed period of limitation has to be dismissed. By amending the written statement it has further been pleaded that since provisions of Resettlement Act are applicable, permission of the Collector is a condition precedent for sale of land.

05. The Trial Court has rightly exercised a discretionary jurisdiction and allowed the application. The order has already been executed. I do not see any

reason to interfere with the impugned Order in exercise of the writ jurisdiction. Needless to mention petitioners / plaintiffs would have every opportunity to meet the case introduced in the written statement by way of an amendment. The writ petition, therefore, fails. The same is dismissed.

[R.G.AVACHAT]

JUDGE

Dahibhate/-