

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.12951 OF 2018

Madhumati Anil Veerkar and Ors.

...Petitioners

vs.

Vishwanath Kashinath Veerkar & Ors.

...Respondents

Mr. D. D. Rananaware for Petitioners.

Mr. Amol Gatne for Respondent Nos.4 to 7.

CORAM : AMIT B. BORKAR, J.

DATE : 26 NOVEMBER 2021

P. C. :

By this writ petition under Article 227 of the Constitution of India, the petitioners are challenging the order dated 25/10/2015 passed by the learned C. J. J. D. Koregaon below application Exhibit 233 and order dated 16/10/2018 below Exhibit 206. By order below Exhibit 206 application for appointment of Court Commissioner has been rejected. By order below Exhibit 233 application for amendment of the plaint has been rejected.

2. I have heard Mr. D. D. Rananaware, learned counsel for petitioners and Mr. Amol Gatne learned counsel for Respondent Nos.4 to 7. Mr. Gatne invited my attention to the application filed by petitioner below Exhibit 221 by which petitioner had sought amendment of plaint to incorporate very same averments which are the subject-matter of application below Exhibit 233 save and except paragraph 3 of application. He also invited my attention to application below Exhibit 231 filed by

petitioner seeking permission not to press the application for amendment below Exhibit 221. The learned Trial Court by order dated 22/10/2018 allowed application below Exhibit 231 by passing order as under:

" Instant application with a prayer to "not press" Exh.221. The application further speaks that plaintiff no.2 to 4 have filed another application for amendment.

2] Casually allowing the plaintiff no.2 to 4 to " Not press" Exh.221 means "wastage of entire 20/10/2018". Permitted to not press Exh.221 subject to cost of Rs.500/- to Government with further direction that plaintiff no.2 to 4 will not repeat its argument again as it is orally stated that there is no introduction of new material and it is only technical aspects which are being deleted from Exh.221. Parties to note and expedite."

3. Reading of Order makes it clear that no liberty was granted by learned trial Court to petitioners to file the same application for amendment afresh. In absence of specific liberty granted to petitioners, petitioners could not have filed the application for amendment of plaint seeking to incorporate same averments which were the subject matter of the application below Exhibit 221. Learned trial Court was therefore justified in rejecting the application for amendment filed by petitioners which is impugned in the present petition.

4. Learned trial Court has rejected the application for appointment of court Commissioner mainly on the ground that there are no pleadings in the plaint seeking removal or encroachment. In absence of pleadings in relation to removal of encroachment, the learned trial Court was justified in rejecting application. There is no error apparent on the face

of record. Petition is therefore dismissed.

(AMIT B. BORKAR, J)