

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3715 OF 2022

ARUNA DEEPAK GANORE AND ANOTHER
VERSUS
ASARAM GANPAT JADHAV

...

Advocate for Petitioners : Mr. A.R. Vaidya

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[CORAM : NITIN B. SURYAWANSHI, J.]
DATE : 1st April, 2022

ORDER :

. The petitioners are aggrieved by order passed by learned 6th Joint Civil Judge Senior Division, Aurangabad in R.C.S. No. 1032 of 2015, thereby allowing application of respondent-plaintiff under Order VI Rule 17 of the Code of Civil Procedure for amendment in the plaint.

2. The learned advocate for petitioners strenuously submits that, the suit was filed in the year 2015 and in spite of objection raised by the petitioners on 06.06.2016 the amendment was not proposed soon thereafter also. The application is belatedly filed in the year 2020 which ought not to have been allowed by the Trial Court. According to him the amendment would cause substantial prejudice to

the petitioners-defendants. The petitioners have questioned the tenability of the suit for simplicitor injunction. He further submits that by way of amendment specific performance of the agreement dated 14.08.2020 is sought.

3. The Trial Court has allowed the application holding that, on the basis of agreement to sale the plaintiff has claimed perpetual injunction. Now the plaintiff wants to claim specific performance of that contract along with perpetual injunction which is inadvertently remained to be claimed by the plaintiff.

4. Considering this, the Trial Court was of the view that it is necessary to allow the amendment, as even if the plaintiff is permitted to incorporate the proposed amendment, the very nature of the suit will not be changed. The defendants would have every opportunity to contest the matter and for deciding the matter on merit, equal opportunity needs to be given to the parties. The trial Court therefore, held that to decide the controversy between the parties, it is just and proper to allow the application. The question of limitation is a mixed question of law of facts and would be considered

on merits since the trial did not commence till date. Therefore, the trial Court allowed the application.

5. It is settled legal position that the amendment needs to be liberally allowed. The Trial Court was justified in allowing the amendment as the same is necessary for deciding the real controversy in issue. No prejudice is caused to the petitioners defendant. The petitioners are entitled to contest the amendment by filing additional written statement and oppose the same on merits. The amendment is necessary to avoid multiplicity of the proceedings. The Trial Court has rightly kept the question of limitation open. Since the Trial Court has properly exercised discretion and has passed a reasoned order while allowing the amendment, there is no illegality or perversity in the impugned order. No case is made out for exercising extraordinary writ jurisdiction.

6. The Writ Petition therefore disposed of.

7. No costs.

**[NITIN B. SURYAWANSHI]
JUDGE**