

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

WRIT PETITION NO.2585 OF 2021

DATTATRAYA KALYANI ANANTPURE AND ANOTHER  
VERSUS  
KALYANI HANUMANT ANANTPURE DIED AND OTHERS

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Advocate for the Petitioners : Shri Kore Ganesh J.  
Advocate for Respondent 6 : Shri Santosh N. Patne

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**CORAM: SMT. BHARATI H. DANGRE, J.**

**DATE :- 11<sup>th</sup> January, 2022**

**Per Court:**

1. Heard the learned counsel for the petitioners and the respondents.
2. The petitioners/ original plaintiffs are aggrieved by the order passed by the learned Civil Judge, Senior Division, on 02.01.2021 in RCS No.225/2011, when their application filed vide exhibit 149 seeking amendment in the plaint invoking Order VI Rule 17 of the Code of Civil Procedure, is rejected.
3. Perusal of the application and the impugned order would reveal that at an earlier point of time, the plaintiffs were permitted to amend their suit and implead respondent No.6 as a party defendant, since he is the subsequent purchaser of the suit property. Amendment was allowed and carried out and defendant No.6 participated in the

proceedings. However, at the fag end when the suit is scheduled for hearing, the plaintiffs moved another application vide exhibit 149 on 07.03.2020 seeking amendment to the plaint by inserting prayer clause and certain additional pleadings and further seeking restraint order against defendant No.6 from alienating the suit property or creating any third party interest.

4. As far as prayer clause 5A is concerned, the learned counsel for the petitioners has instructions, not to press for the said relief.

5. On perusal of the application for amendment, it can be seen that certain pleadings are sought to be inserted qua defendant No.6, who is already impleaded as the party defendant and the amendment is sought to be inserted vide paragraphs 6-1, 6-2 and column 1A, 1B and 1C by which, the rights of defendant No.6 are sought to be made subject to the outcome of the plaint since he has stepped into the shoes of defendant No.5.

It is this application, which is rejected under the impugned order, by recording that the suit is filed for injunction simplicitor and evidence of both sides is over and the matter is listed for final hearing. Recording that the amendment does not touch the real controversy between the parties and the amendment is not necessary for effective adjudication of the dispute since the real controversy is with regard to the obstruction to the peaceful possession and enjoyment of the plaintiffs over

the suit house at the hands of the defendants. In any case, the right of defendant No.6 as a purchaser from defendant No.5, is subject to what defendant Nos.1 to 5 are entitled to and nothing more than that. Recording that the application is brought at the stage when the suit is scheduled for final hearing, the application has been rightly rejected.

6. In the wake of the above, I find no legal infirmity in the impugned order, which is upheld and the Writ Petition is dismissed.

*kps*

( SMT. BHARATI H. DANGRE, J.)