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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5984 OF 2019

Chandrashekhar Anantrao Ronge and Another PETITIONERS

VERSUS

Mohan Ganpati Bansode and Others RESPONDENTS

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Mr. Sharad V. Natu, Advocate for the petitioners
Mr. Satish S. Manale, Advocate for respondent No.1

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[CORAM : NITIN B. SURYAWANSHI, J.]
DATE : 20th JULY, 2022

ORDER :

1. The petitioners / original defendants No. 4 and 5 in Regular Civil Suit No. 567 of 2005 are aggrieved by the order passed by the learned 5th Joint Civil Judge, Senior Division, Latur below Exhibit-149 in the said suit, thereby allowing the amendment application filed by respondent No. 1 – plaintiff.
2. The plaintiff and defendant No. 6 are brothers *inter se*. Defendants No.1 and 2 are also brothers *inter se*. The plaintiff is the step brother of defendants No.1 and 2. Plaintiff's father effected partition of land bearing Gut No. 283 admeasuring 6 Hectare 32 *Are*, situated at village Chincholi (B), Taluka and District - Latur and accordingly, partition memo was prepared on 25th September, 1982. Thereafter revenue entries were also

taken.

3. The plaintiff filed the suit for recovery of possession of 30 *Are* land out of eastern portion of land of defendant No.1, from Gut No. 283. The plaintiff claimed that on 13th May, 2005, he measured the suit land through Taluka Inspector of Land Records and it was found that the plaintiff has 9 Acre less land than defendant No.6. The suit was resisted by the defendants, by filing written statement.

4. The plaintiff, thereafter filed application for appointment of Court Commissioner, which was allowed on 23rd June, 2010. The Court Commissioner / TILR measured the suit land on 15th June, 2011 and submitted his report. It is stated in the report that the plaintiff is in possession of 1 Hectare 24 *Are* land. As per the revenue entries in seven twelve extract, the plaintiff is not possessing 15 *Are* land. Defendants No.2 and 3 were found in possession of additional 3 *Are* land and defendant No.1 is in possession of 1 Hectare 29 *Are* land. On the basis of the report of the Court Commissioner, the plaintiff moved an application Exhibit-149 seeking amendment in the plaint.

5. The said application was resisted by defendants No.4 and 5 contending that the said application is belatedly filed with a view

to protract the suit, when the suit is posted for final arguments. The Trial Court allowed the said application by imposing costs of Rs.3000/- on the plaintiff. The defendants / petitioners are aggrieved by this order.

6. Heard learned advocate for the petitioners and learned advocate for respondent No.1.

7. Learned advocate for the petitioners assailed the impugned order, by relying on "*Sasa Detergent Division V/s Damodar S. Mudliyar and Others*" 2012 (2) Mh.L.J. 15 and "*Kailash Anupam Khimsiya V/s Shamji Enterprises and Others*" 2019 (2) Mh.L.J. 168, contending that at the fag end of the trial, the amendment application is filed and it is allowed. The said amendment is proposed belatedly, though the plaintiff was aware of the said fact at the time of filing of the suit. The amendment changes nature of the suit and considering the prayers made in the plaint, the same cannot be granted. According to him, the impugned order is, therefore, liable to be quashed and set aside.

8. Learned advocate for respondent No.1 – plaintiff, on the other hand, supported the impugned order contending that the suit is for recovery of possession of encroached land. The TILR was appointed on 23rd September, 2010, who submitted report

on 15th June, 2011 and thereafter he was examined on 26th August, 2016 and his report and the map is exhibited and thereafter the application seeking amendment is filed on 21st February, 2018. He, therefore, submits that the Trial Court was justified in allowing the amendment.

9. I have given due consideration to the rival submissions of both the learned advocates. Perused the writ petition and the documents filed along with the same and the impugned order. I have also gone through the citations relied on by the learned advocates for the respective parties.

10. Perusal of the plaint reveals that the suit is filed for removal of encroachment and for possession of 30 *Are* land. Admittedly, the TILR was appointed as a Court Commissioner and his report dated 15th June, 2011 is at Exhibit-186. His evidence is recorded on 26th August, 2016. True it is that the application Exhibit-149 is filed by the plaintiff after two years from the date of examination of the TILR, but, for that purpose the Trial Court has imposed costs of Rs.3000/- on the plaintiff, while allowing the amendment application.

11. The record reveals that the amendment is necessary for just decision of the suit and for resolving the real controversy

between the parties. Taking into consideration the pleadings of the parties and the impugned order, this Court is of the considered view that the Trial Court has rightly exercised the discretion, in allowing the amendment application filed by the plaintiff.

12. In "**Sasa Detergent Division**" (*supra*), this Court has held that principle of *dominus litus* is applicable in case of impleadment of parties and would not be applicable in case of incorporation of pleadings. If there is delay in moving amendment application, the amendment application can be allowed only if the reasons for the delay are found to be satisfactory. Imposition of costs cannot substitute the obligation of the party seeking amendment to satisfactorily explain the delay for seeking amendment at a belated stage.

In the case in hand, since it is held that it is necessary to allow the amendment in the interest of justice and for the effective resolution of the dispute between the parties and costs is already imposed, this citation would not assist the petitioners.

13. In "**Kailash Anupam Khimsiya**" (*supra*), the application for amendment of plaint was rejected on the ground of delay. The plaintiffs, by filing Chamber Summons, claimed amendment of

plaint, including prayer of specific performance. In these facts, this Court upheld the rejection of the application seeking amendment in the plaint on the ground that on the date of filing of application for amendment application, even filing of fresh suit was barred by limitation provided under Article 137 of Schedule of the Limitation Act, 1963.

Such are not the facts of the present case. Since this decision is rendered in different facts, it does not assist the petitioners' case.

14. The Trial Court has passed a reasoned order. No case is made out by the petitioners to interfere in the discretion exercised by the Trial Court in favour of respondents, in the extraordinary writ jurisdiction. Writ petition, being devoid of merit, is dismissed. No costs.

15. The suit is of the year 2005, the Trial is expedited. Trial Court shall decide the suit as expeditiously as possible, preferably within a period of one year from the date of receipt of writ of this order.

[NITIN B. SURYAWANSHI]
JUDGE