

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

WRIT PETITION NO.8078 OF 2014

Anil s/o Keshavrao Kanhe,
Age: 52 yrs., Occ. : Medical Practitioner & Agri,
R/o Near Shivaji Statue, Parbhani. ... Petitioner

Versus

Executive Director,
Parbhani Krushi Gosanwardhan Ltd.
Parbhani.
A subsidiary Company of Marathwada
Development Corporation, having registered
Office at cattle shade, Parbhani-Gangakhed
Road, Parbhani ... Respondent

...
Advocate for Petitioner : Mr. Milind M. Patil (Beedkar)
AGP for Respondent – State : Mr. Y. G. Gujarathi
Advocate for Respondent : Mr. P. R. Katneshwarkar
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 09th FEBRUARY, 2022

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally by the consent of the parties.
2. This petition takes exception to the order dated 13-03-2014, passed below Exhibit-41 in R.C.S. No.248/2012, by the learned 4th Joint Civil Judge, Junior Division, Parbhani, thereby rejecting the application filed by petitioner – plaintiff under Order VI Rule 17 of the Code of Civil Procedure.

3. The petitioner – plaintiff has filed the suit for permanent injunction for restraining defendant from interfering and obstructing into the peaceful possession of the suit property and for seeking further relief that the plaintiff should not be dispossessed without following due process of law.

4. I have heard the rival submissions of the respective advocates for petitioner and respondent.

5. The trial Court has rejected the application for amendment holding that principle of estoppel comes into picture and the plaintiff cannot deny title of the defendant over the suit property.

6. In *Bharat Petroleum Corporation Ltd. Vs. Precious Finance Investment Pvt. Ltd.*, reported in *2007(1) Mh.L.J. 331*, this Court (*Coram: D. B. Bhosale, J.*) held that:-

“33(xix). While considering whether an application for amendment should be allowed, the Court is not expected to go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment.”

7. In the light of the above ratio and facts of the present case, this Court is of the view that the trial Court has improperly rejected the

application filed by the plaintiff seeking amendment. Admittedly, issues are yet to be framed and the trial is yet to commence. In this view of matter, the impugned order cannot sustain and the same is hereby quashed and set aside.

8. The Application Exhibit-41 in R.C.S. No.248/2012 is allowed. Amendment shall be carried out within a period of two weeks from today.

9. Rule is made absolute in the above terms.

(NITIN B. SURYAWANSHI, J.)