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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 2285 OF 2022

NARAYAN GENU YEOLE AND ANR

....PETITIONERS/
DEFENDANTS

V/s.

JANAK RAJARAM JOGDAND

....RESPONDENT/
PLAINTIFF

Mr. Sachin S. Punde Advocate for the Petitioners

CORAM : NITIN W. SAMBRE, J.

DATE: MARCH 2, 2022.

P.C.:

1) In a Suit for declaration of right of way and permanent injunction being R.C.S. No. 111/2017, Application Exh. 59 moved by the Respondent-Plaintiff for amendment of the Plaint came to be allowed vide impugned order dated 17/01/2022. As such, this Petition by Defendants.

2) Mr. Sachin S. Punde, learned counsel for the Petitioners-Defendants would urge that there is absence of due diligence on the

part of the Respondent-Plaintiff as amendment is based on same cause of action for which the Suit is initiated i.e. of 2017. He would further claim that the amendment changes the nature of relief claimed. That being so, amendment ought not to have been granted.

3) I have appreciated the said contentions.

4) I am informed that issues in the Suit are already framed. By way of amendment, based on cause of action of 2017 Suit claim is initiated. On very same cause of action Respondent-Plaintiff has sought removal of encroachment by inserting another part of the property.

5) Fact remains that Suit claim is within limitation and the Trial in the Suit even if has commenced, has not reached at an advance stage. That being so, order impugned thereby allowing the amendment is quite justified as same will avoid repetition of litigation resulting into saving precious judicial time. Claim sought to be inserted by way of amendment is also barred under Order II Rule 2 of Code of Civil Procedure, 1908. The only modification which requires in the order impugned is, amendment is allowed subject to cost of Rs. 3000/-, to be deposited before the Trial Court within period of 4

weeks from the date of production of this order. Petitioner-Defendant shall be entitled withdraw the cost.

6) Petition stands dismissed.

[NITIN W. SAMBRE, J.]