

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION 12828 OF 2019

Aditya Ramchandra Memane & ors. .Petitioners

Vs.

Proposed the Anand (Darling Maharaj) .Respondents
Gruhnirman Society, Saswad through
Chief Promotor & ors.

Mr. Vivek V. Salunkhe, Advocate, for the Petitioners
None for the Respondents

CORAM : ROHIT B. DEO, J.

DATE : 20.07.2022

P. C.

. The challenge is to the order dated 05.09.2019 rendered by the Joint Civil Judge, Junior Division, Saswad in R.C.S. 46 of 2002, whereby allowing Application preferred by the Plaintiffs for amendment of issues, the learned trial Court has deleted the word “by necessity” from Issue 1 and has framed an additional issue 4A as to whether the Plaintiff is entitled to mandatory injunction as prayed.

2. I see no error in the order impugned.

3. The submission of the learned counsel for the Petitioners – Defendants, Mr. Salunkhe is that the suit was at the stage of Judgment, and therefore, the deletion and addition was impermissible. O. XIV, Rule 5 of the Code of Civil Procedure, 1908 (for short ‘CPC’) empowers the Court, at any stage of the proceedings, but obviously before passing of the decree, to delete or add or amend the issues.

4. Insofar as merits of the order impugned, the learned trial Judge has rightly noted that the claim of the Plaintiffs was not on the basis of easement of necessity. All that is pleaded is that the Plaintiff has an easementary right of way. Insofar as the additional issue is concerned, the Plaintiff has sought relief of mandatory injunction and all that the additional issue does is to put the burden of proving such entitlement on the Plaintiff.

5. I see no reason to interfere in writ jurisdiction.

6. The learned trial Judge shall decide the suit expeditiously and dispose of the same within the next 90

days.

7. The Petition is disposed of.

(ROHIT B. DEO, J.)