

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

WRIT PETITION NO.1367 OF 2020

**GANESH APPASAHEB SHELKE AND OTHERS
VERSUS
BALASAHEB PRAKASH JOGDAND AND OTHERS**

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Advocate for Petitioners : Mr. S.S. Wagh
Advocate for Respondent Nos.1 to 4 : Mr. Girish K. Naik Thigale

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 06th SEPTEMBER, 2023

PER COURT :

1. Petitioners are aggrieved by the order dated 02/01/2020, passed by learned 2nd Joint Civil Judge, Senior Division, Beed, below Exhibit-106 in Regular Civil Suit No.329/2013, thereby allowing application filed by the plaintiffs/respondent Nos.1 to 4, under Order VI Rule 17 and granting permission to carry out amendment in the plaint.

2. Heard learned advocate for petitioners and learned advocate for respondent Nos.1 to 4. Perused the writ petition memo, annexures thereto, the impugned order and citations relied upon by the learned advocate for petitioners.

3. The impugned order is assailed by the petitioners mainly on the ground that, at the fag end of the trial amendment in the plaint is permitted. There is absolute lack of due diligence on

the part of plaintiffs in filing amendment application. The amendment sought would change the nature of the suit and defence of the defendants.

4. Perusal of the record indicates that amendment sought by the plaintiffs is of a technical nature. By way of amendment, plaintiffs seek to place on record boundaries of the suit property which are not mentioned in the plaint, the same will not change nature of the relief claimed in the plaint and there is no issue framed about four boundaries of the suit property. Plaintiffs have claimed that there appears clarity in the evidence in respect of description of the suit property mentioned in the plaint.

5. Trial Court has allowed the application observing that detailed description of the suit property will help the Court for coming to a proper conclusion in deciding real controversy between the parties. The proposed amendment will not change the nature of the suit and therefore, no prejudice would be caused to defendants if the amendment is granted. The proposed amendment is bonafide, relevant and necessary for the purpose of determining real question between the parties. Trial Court has exercised discretion in favour of plaintiffs, which in the facts of the present case, is not liable to be interfered with in exercise of extraordinary writ jurisdiction. However, taking into consideration the fact that amendment

application is filed after six years of filing of the suit, cost imposed on the plaintiffs by the trial Court needs to be enhanced.

6. Learned advocate for petitioners, has relied on the judgments of the Apex Court in *Chander Kanta Bansal Vs. Rajinder Singh Anand*, AIR 2008 SC 2234 and *J. Samuel and Others Vs. Gattu Mahesh and Others*, (2012) 2 SCC 300. Both these judgments are distinguishable on facts.

7. Trial Court has not committed any jurisdictional error or error of law while allowing the amendment application. Writ petition being devoid of merit is dismissed. However, the plaintiffs shall pay cost of Rs.25,000/- to the defendants, in the Trial Court.

8. Needless to state that defendants will be entitled to file additional written statement after the amendment is carried out.

(NITIN B. SURYAWANSHI, J.)