

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10747 OF 2023

Topa Purushottam Barhate
and another

.... Petitioners

Versus

Bhaskar Purushottam Barhate
and others

.... Respondents

.....
Mr. C.K. Shinde, Advocate for the Petitioners

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 30th AUGUST, 2023

ORDER :

1. The petitioners are aggrieved by the order passed by learned Civil Judge, Senior Division, Yawal, below Exhibit-253 in Regular Civil Suit No.45 of 2012, thereby allowing the application filed by the respondent No.1/plaintiff, seeking amendment in the plaint at the stage of final argument of the suit.

2. Respondent No.1/original plaintiff filed suit for partition against the petitioners and other defendants for declaration, partition, rendition of accounts and perpetual injunction in respect of the suit properties described in paragraphs Nos. 1 to 3 of the plaint. The petitioners/defendants appeared and opposed the suit by filing

written statement. The Trial Court framed issues at Exhibit-44. Additional issues were framed on 04/10/2017. Thereafter, the parties adduced their respective evidence. Thereafter, the arguments of respondent Nos.1/plaintiff were concluded. When the suit was fixed for hearing of arguments of petitioners/defendant Nos.1 and 2, respondent No.1/plaintiff filed application Exhibit-253 for amendment of plaint. The said application was opposed by the petitioners/defendant Nos.1 and 2. The Trial Court has allowed the application. Hence, the present petition.

3. Learned advocate for the petitioners assailed the impugned order submitting that the same is in contravention of proviso to Rule 17 Order VI of the Code of Civil procedure. The Trial Court has erred in allowing the application at the fag end of the Trial. There is total lack of due diligence on the part of respondent No.1/plaintiff in filing the said application, and on that ground alone, the application ought to have been rejected by the Trial Court.

4. Perused the memo of writ petition, annexures thereto and the impugned order.

5. I am of the opinion that no case is made out by the petitioners to interfere in the impugned order. It is settled legal position that amendment amendment is to be liberally allowed, it is necessary to resolve the dispute between the parties , and to avoid multiplicity of proceedings. Indisputably, the suit is for partition. By allowing the amendment, the nature of the suit is not likely to change. For absence of due diligence, the Trial Court has imposed costs of Rs.10,000/- on the plaintiff, which is to be paid to the defendants. Order passed by the Trial Court is reasoned order. The Trial Court has rightly exercised discretion in favour of the plaintiff. There is no illegality or perversity in the order impugned in the present petition. The writ petition being devoid of merit is dismissed.

[NITIN B. SURYAWANSHI]
JUDGE

S.P Rane