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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6693 OF 2022

Babasaheb Pandharinath Sase and Others

PETITIONERS

VERSUS

Changdev Govind Sase

RESPONDENT

.....

Mr. Pradeep K. Palve, Advocate for the petitioners

Mr. D. G. Nagode, Advocate for the respondent

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 8th JUNE, 2023

ORDER :

1. This petition, filed under Article 227 of the Constitution of India, impugns order dated 5th May, 2022 passed by 7th Joint Civil Judge, Senior Division, Ahmednagar, below Exhibit-46-A in Regular Civil Suit No.568 of 2019, thereby allowing the application filed by the respondent- plaintiff under Order VI, Rule 17 of the Civil Procedure Code.

2. The plaintiff filed the suit for permanent injunction against the petitioners – defendants on 5th November, 2019. The defendants appeared and resisted the suit, by filing written statement and counter claim. Issues were framed by the Trial Court on 17th July, 2020. Thereafter, the plaintiff filed application Exhibit-46-A seeking amendment to the plaint, on the basis of

subsequent events. The said application was opposed by the defendants contending that the same is filed after commencement of the trial and it changes the nature of the suit. The Trial Court allowed the application for amendment. Hence, the present petition.

3. Heard learned advocate for the petitioners and the learned advocate for the respondent. Perused the memo of writ petition and documents annexed along with the same.

4. Learned advocate for the petitioners assailed the impugned order contending that the Trial Court has erred in allowing the amendment application, which was filed after commencement of the trial. He submits that the nature of the suit is changed by allowing the said amendment. He submits that the relief, which are claimed by way of amendment, could not have been granted to the plaintiff and plaintiff has other alternate remedy to claim such relief.

5. Per contra, learned advocate for the respondent supported the impugned order contending that the amendment was sought on the basis of the subsequent events and the same is rightly allowed by the Trial Court.

6. It appears from the record that the plaintiff initially filed

the suit for permanent injunction against the defendants. It further appears that during the pendency of the suit, the defendants dug well in their part of the land and dumped the entire material, taken out from the well, in the brook, through which the plaintiff was allowed right of way, under the orders of Tahsildar. By way of amendment, the plaintiff is seeking removal of the said encroachment made by the defendants. Since these are subsequent developments, the Trial Court is justified in allowing the amendment application. This would avoid multiplicity of litigation and the Trial Court would be in a position to effectively adjudicate the dispute between the parties. No prejudice is likely to be caused to the petitioners by allowing the said amendment. There is no illegality or perversity in the order impugned in the present writ petition. No case is made out by the petitioners to warrant exercise of extraordinary writ jurisdiction. Writ petition being devoid of merits is dismissed.

7. It is, however, made clear that the observations made in this order are *prima facie* and the Trial Court shall not be influenced by the same while deciding the suit on merits.

[NITIN B. SURYAWANSHI]
JUDGE