

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7266 OF 2022

Ramesh S/o. Dagdu Khandale
and others

.... Petitioners

Versus

Savitabai W/o. Mangaldas Jadha
and another

.... Respondents

.....

Mr. Nitin T. Tribhuwan, Advocate for the Petitioners

Mr. Vinod Patil, Advocate for Respondent Nos. 1 and 2

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 15th MARCH, 2023

ORDER :

1. By this petition, filed under Article 227 of the Constitution of India, the petitioner impugns order dated 29/04/2022 passed by the learned Civil Judge, Junior Division, Bhokardan, below Exhibit 25 to the extent of rejecting amendments, and order passed below Exhibit-31 in Regular Civil Suit No.26 of 2018.

2. The petitioners/original plaintiffs have filed the suit for perpetual injunction in respect of the suit property. Application Exhibit-5 filed by the petitioners for temporary injunction was rejected. The said order is confirmed by the Appellate Court. Thereafter, the petitioners filed applications

Exhibits 25 and 31 seeking amendment in the plaint. The trial Court has partly allowed application Exhibit-25, however, rejected application Exhibit-31. Hence, the present petition.

2. Heard the learned advocate for the petitioners and the learned advocate for the respondents. Perused the grounds raised in the petition, and the documents placed on record including impugned orders.

3. It is not in dispute that both the applications were filed before commencement of the trial. On going through the proposed amendment, it appears that the proposed amendment is necessary for decision of the real controversy between the parties. By allowing the proposed amendment, multiplicity of the proceedings would be avoided. No substantial prejudice would be caused to the defendants, if the amendments sought by plaintiffs are allowed. The defendants will be at liberty to file additional written statement and contest the averments incorporated in the amendments on merits by leading evidence. The impugned orders passed by the trial Court are, therefore, contrary to the settled legal position that amendment is to be liberally allowed.

4. In that view of the matter and in view of peculiar facts of the case, the impugned orders are quashed and set aside.

5. In the result, the writ petition is allowed in terms of prayer clause (B).

6. Application Exhibit-25 and Application Exhibit-31 are hereby allowed.

7. The amendments shall be carried out by the petitioners within a period of two weeks from the date of receipt of writ of this order.

8. The petitioners/plaintiffs shall pay costs of Rs.15,000/- to the respondents/defendants in the trial Court.

[NITIN B. SURYAWANSHI]
JUDGE

S.P Rane