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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9577 OF 2023

Narayan Dhondiba Sontakke and Others PETITIONERS

VERSUS

Ramdas Bhaurao Aawhad and Others RESPONDENTS

.....
Mr. Yuvraj V. Kakade, Advocate for the petitioners
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 4th AUGUST, 2023

ORDER :

1. Leave to correct prayer clause. Amendment be carried out forthwith.
2. The petitioners are aggrieved by order dated 7th June, 2023 passed by learned 2nd Joint Civil Judge, Junior Division, Pathardi, below Exhibit-201 in Regular Civil Suit No. 103 of 2009, thereby rejecting the application filed by the petitioners – plaintiffs for adding name of Smt. Usha Navnath Avhad as party defendant to the suit under Order 1 Rule 10 of the Civil Procedure Code and to amend the plaint accordingly.
3. The petitioners have filed the suit for injunction, measurement and fixation of the boundaries of the suit property.

The defendants appeared and opposed the suit, by filing their respective written statements. The petitioners, thereafter, filed application Exhibit-197 seeking amendment of the plaint, contending that RTS proceedings were pending in respect of the suit property. In the said proceedings, order was passed to take Mutation Entry No. 15340, thereby recording name of Smt. Usha Navnath Avhad to the suit property. The petitioners, therefore, prayed that in the place of defendants No.1A to 1E, Chanakya Charitable Trust, through Smt. Usha Navnath Avhad be permitted to be substituted. This application came to be rejected by the Trial Court, in view of the provisions of section 50 of the Maharashtra Public Trusts Act, which bars suit, which is filed without obtaining consent of Charity Commissioner, in writing. Admittedly, since the petitioner did not obtain permission of the Charity Commissioner under section 50 of the MPT Act, the Trial Court rejected application Exhibit-197, by order dated 9th January, 2023.

4. The petitioners thereafter filed application Exhibit-201 seeking addition of Smt. Usha Navnath Avhad as defendant. Rejection of application Exhibit-201 is impugned in the present petition.

5. Heard learned advocate for the petitioner. Perused the

memo of writ petition, documents annexed with it and the impugned order.

6. Learned advocate for the petitioners submits that in Mutation Entry No. 15340 name of Smt. Usha Navnath Avhad, President of the Trust is individually recorded to the suit property and it is further mentioned that after NA permission is obtained, name of the Trust be recorded. Therefore, he submits that since individual name of Smt. Usha Navnath Avhad is recorded in the Mutation Entry, the Trial Court ought to have allowed the application Exhibit-201.

7. The Argument of the petitioners is devoid of merit. The Trial Court has rejected the application holding that by order passed below Exhibit-197, similar prayer is already rejected and the name of Smt. Usha Navnath Avhad is recorded in the revenue record as trustee of the public trust, namely Chankya Charitable Trust. Therefore, in view of sections 50 and 51 of the Trusts Act, permission of the Charity Commissioner is necessary. Admittedly, earlier application Exhibit-197 seeking similar prayer is rejected on the same ground by the Trial Court. Therefore, the Trial Court is justified in rejecting application Exhibit-201. No jurisdictional error or error of law is committed by the Trial Court while rejecting the application Exhibit-201. There is no illegality

or perversity in the order impugned in present writ petition. No case is made out by the petitioners to cause interference in the impugned order, in exercise of extraordinary writ jurisdiction. Writ petition, being devoid of merit, is dismissed.

[NITIN B. SURYAWANSHI]
JUDGE

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