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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8960 OF 2023

Kunal Dilip Dube and Another

PETITIONERS

VERSUS

Bapusaheb Madhavram Bhavar and Others

RESPONDENTS

.....
Mr. K. N. Shermale, Advocate for the petitioners

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 26th JULY, 2023

ORDER :

1. The petitioners – original defendants are aggrieved by the order passed by learned 6th Joint Civil Judge, Senior Division, Sangamner, below Exhibit-116 in Regular Civil Suit No. 203 of 2007, filed by the respondent - plaintiff for amendment of the plaint.
2. Respondent No.1 has filed the suit for declaration and injunction in respect of the customary road shown in the map filed along with the plaint. The defendants resisted the suit, by filing written statement. The Trial Court framed issues and listed the matter for hearing. Parties lead their respective evidence.
3. The plaintiff filed application for amendment on 3rd October,

2022, which was rejected by the Trial Court. The The plaintiff thereafter challenged the said order, by filing Writ Petition No. 10745 of 2022, which was allowed by this Court, by order dated 25th November, 2022, subject to payment of cost of Rs.25,000/-. Accordingly, amendment was carried out. Thereafter, the plaintiff filed application Exhibit-116 for amendment in the plaint, contending that during the pendency of the suit, the plaintiff has transferred land in Gut Nos. 132/1 and 132/2 in the names of his family members and also to a third person Kisan Bhosale. He contended that the persons in whose names the properties are transferred are necessary parties to the suit and, he, therefore be permitted to carry out amendment in the plaint and incorporate said pleadings. The Trial Court has allowed the application of amendment. Hence, the present writ petition.

4. Heard learned advocate for the petitioners. Perused the memo of writ petition, annexures, the impugned order and the judgment relied upon by the learned advocate for the petitioner.

5. Learned advocate for the petitioner states that the amendment application is filed by the plaintiff, when the suit was at the stage of final hearing and hence the Trial Court should not have allowed the same. Further submission is that the impugned order is contrary to the proviso to Rule 17 of Order 6 of the Civil

Procedure Code. In support of his submissions, he placed reliance on unreported judgment of Single Judge of this Court in Writ Petition No. 7721 of 2019.

6. Admittedly, the transactions entered into between the plaintiff and his family members and third party are in respect of the suit property. The orders passed in the suit may affect the interest of the proposed defendants. Amendment can be carried out at any stage of the proceedings, provided that the same is necessary for effective adjudication of the dispute between the parties.

7. The Trial Court has allowed the amendment for effective adjudication of dispute between the parties and has imposed cost of Rs.2,500/- on the plaintiff.

8. The decision relied on by the learned advocate for the petitioner is rendered in different facts and is of no assistance to the petitioners in the present case.

9. No jurisdictional error or error of law is committed by the Trial Court while passing the impugned order. There is no illegality or perversity in the order impugned in the writ petition. Writ petition being devoid of merit is dismissed.

10. Considering the fact that the suit is of the year 2007, hearing is expedited. Learned 6th Joint Civil Judge, Senior Division, Sangamner shall decide Regular Civil Suit No. 203 of 2007 within six months from the date of receipt of writ of this order.

11. At this stage, learned advocate for the petitioners requests for grant of stay to the further proceedings of the suit for two weeks so as to enable the petitioners to approach the Apex Court. The request is granted. Proceedings of Regular Civil Suit No.203 of 2007 pending in the Court of 6th Joint Civil Judge, Senior Division, Sangamner shall remain stayed for a period of two weeks from today.

[NITIN B. SURYAWANSHI]
JUDGE