

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10581 OF 2023

Girdhar Hari Jawale And Another

Petitioners

Versus

Mangala Sudhakar Ingale And Others

Respondents

Mr. S.B. Bhapkar, Advocate for the petitioners.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 25th AUGUST, 2023

ORDER :

1. Petitioners are aggrieved by the order passed by learned 2nd Joint Civil Judge, Senior Division, Bhusaval, below Exhibit-112, in Special Civil Suit No. 28/2014, thereby allowing the application filed by the respondents/plaintiffs, under Order 6 Rule 17 of CPC.

2. Respondents/plaintiffs filed suit for declaration and injunction. In the suit, petitioners/defendants appeared and opposed the suit by filing written statement. Thereafter, application for grant of temporary injunction was rejected and recording of plaintiffs' evidence commenced. At that stage, application Exhibit-112 is filed by the plaintiffs contending that

after rejection of application for temporary injunction, defendants have taken possession of the suit property and therefore plaintiffs want to bring subsequent events on record. This application is allowed by the Trial Court. Petitioners are aggrieved by this order.

3. Heard the learned advocate for the petitioners. Perused the memo of writ petition, annexures thereto and the impugned order.

4. It appears from the record that by way of amendment plaintiffs wanted to bring subsequent events on record. Trial Court has observed in the impugned order that issues are framed on 11.06.2014 and the evidence affidavit of the plaintiffs' witness was filed on 08.08.2014. Cross examination of the plaintiffs' power of attorney was completed on 17.02.2023 and thereafter plaintiffs have filed evidence affidavit of witness Devendra on 28.03.2023. When the matter was kept after cross examination of witness Devendra, the application Exhibit-112 is filed. Further, taking into consideration the fact that the amendment is necessary for effective adjudication of lis between the parties and since it brings subsequent events on record, it is necessary to allow the same.

Amendment will not change the nature of the suit and will not cause any prejudice to the rights of the defendants. Trial Court has further observed that defendants will be entitled to file additional written statement. For lack of due diligence, Trial Court has imposed cost on the plaintiffs, which is to be paid to defendants.

5. Trial Court has passed the order in consonance with the settled legal position that the amendment is to be liberally allowed and since by way of amendment subsequent events were sought to be brought on record, Trial Court is justified in allowing the amendment. There is no illegality or perversity in the order impugned in the present petition. No case is made out by the petitioners to warrant interference in the extra ordinary writ jurisdiction. Writ petition being devoid of merit is dismissed.

[NITIN B. SURYAWANSHI, J.]