

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.9949 OF 2015

**VINOD GOVINDRAO BHANUSHALI
VERSUS
MAHANANDA UMESH GULVE AND OTHERS**

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Advocate for Petitioner : Mr. Nikhil S. Tekale
Advocate for Respondent Nos.1 to 4 : Mr. Vikram S. Undre

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 05th SEPTEMBER, 2023

PER COURT :

1. Order dated 21/08/2015, passed by learned 2nd Joint Civil Judge, Junior Division, Bhoom, below Exhibit-108 in Regular Civil Suit No.179/2011, is challenged in the present petition.

2. Petitioner/plaintiff has filed the suit for declaration and permanent injunction in respect of the suit property. Respondents/defendants opposed the suit by filing joint written statement. After framing of issues, trial commenced and the plaintiff has concluded his evidence. Thereafter, application Exhibit-108 is filed by the plaintiff seeking leave to amend the plaint and add prayer clause, as the plaintiff wanted to add alternate prayer of possession and meanse profit. The said application is rejected by the Trial Court. Hence, the present petition.

3. Heard learned advocate for petitioner and learned

advocate for respondent Nos.1 to 4. Perused the writ petition memo, annexures thereto and the impugned order.

4. Trial Court has rejected the application for amendment filed by the plaintiff for the lack of due diligence on the part of petitioner/plaintiff and since it is filed after the commencement of trial. It is not in dispute that defendants have filed Regular Civil Suit No.107/2008 for redemption of mortgage in respect of the suit property. In this view of the matter, though the petitioner has filed application for amendment after commencement of trial, the same needs to be allowed so as to avoid multiplicity of the proceedings and to decide the lis between the parties.

5. No prejudice is likely to be caused to the defendants if the amendment is allowed. For the lack of due diligence on the part of plaintiff, defendants can be adequately compensated.

6. For the aforesaid reasons, writ petition is allowed. Impugned order dated 21/08/2015, passed below Exhibit-108 in Regular Civil Suit No.179/2011, is quashed and set aside. Application Exhibit 108 is allowed, subject to the petitioner/plaintiff paying cost of Rs.15,000/- to the respondents/defendants, in the trial Court.

(NITIN B. SURYAWANSHI, J.)