

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPEAL FROM ORDER NO.43 OF 2017
 WITH CA/11843/2017 IN AO/43/2017

1. Ankush s/o. Keru Kawale,
 Died through his L.Rs.
 Sharad s/o. Ankush Kawale,
 Age 37 years, Occu. Labour,
2. Dilip s/o. Bali Shinde,
 Age 55 years, Occu. Agril.,
3. Somnath s/o. Rghunath Koli,
 Age 70 years, Occu. Agril.,
4. Balbhim s/o. Lalasaheb Ghogare,
 Age 61 years, Occu. Agril.,
5. Gangaram s/o. Abhiman Bhalerao,
 Age 55 years, Occu. Agril.,
6. Rupchand S/o. Manohar Kawale,
 Age 61 years, Occu. Agril.,

All R/o. Kawalewadi, Tal. Osmanabad,
 Dist. Osmanabad

.. Appellants
 (Original Defendants
 Nos.4 to 6 & 8 to 10)

Versus

1. Mallikarjun S/o. Manikrao Khot-Patil,
 Died Through Lrs.
- 1a. Rangnath s/o. Mallikarjun Khot-Patil,
 Age 45 years, Occu. Agril.,
- 1b. Naganath s/o. Mallikarjun Khot-Patil,
 Age Major, Occu. Agril.,
 R/1a & 1b R/o. Kawalewadi, Tal.Dist.Osmanabad
- 1c. Pushpa w/o. Vilas Bhange,
 Age Major, Occu. Household,
 R/o. Yedshi, Tal.Osmanabad,
 District Osmanabad

- 1d. Chaya s/o. Suresh Bhise,
Age Major, Occu. Household,
R/o. Padoli (N), Tal. Kallamb,
Dist. Osmanabad
2. The State of Maharashtra,
Through its Collector, Osmanabad
3. Tahsildar Tahasil Office, Osmanabad
4. Babru s/o. Sukhadeo Kawale,
Died through L.Rs.
- 4a. Bapu s/o. Babru Kawale,
Age 42 years, Occu. Agril.,
- 4b. Gunawant s/o. Babru Kawale,
Age 35 years, Occu. Agril.,

R/4a, 4b and 5 R/o. Kawalewadi,
Tal. and Dist. Osmanabad

.. Respondents

(Respondents No.1a to 1d are the
original plaintiffs and No.2 to 5 are
the original defendants.)

Mr. Sushant B. Choudhari, Advocate for Appellants;
Mr. S. S. Gangakhedkar, Advocate for Respondents Mr. 1a to 1d;
Mr. P. G. Borade, A.G.P. for Respondents No.2 and 3/State;
Respondents No. 4a and 4b and 5 served

CORAM : S. G. MEHARE, J.

DATE : 23-10-2023

ORAL JUDGMENT :-

1. Heard the learned counsels for the respective parties.
2. The learned trial Court dismissed the suit for removal of encroachment. The learned District Judge-1, Osmanabad, set aside the Judgment and decree of the learned trial Court and remitted the matter to the trial Court for hearing afresh. However,

the learned District Judge-1 has granted leave to alter the pleading, if necessary. The appellants have objection to leave granted to alter the pleading if necessary.

3. The learned counsel for the appellants would submit that an application to add respondents No.11 to 16 was allowed. However, it was remained to be effected. In that context, the learned District Judge-1 has ordered in clause (3) of the operative part of Judgment and decree, “alter the pleading if necessary”.

4. The learned counsel for the appellants submits that alteration of pleading and giving effect to the application for amendment already effected, are two distinct things. The above operative part should not be misunderstood by parties. Hence, that portion may be deleted.

5. Both parties principally accepted the impugned judgment and order. However, they seek clarification about words “alter the pleading if necessary”, in the operative part of the impugned judgment and decree.

6. The matter is pending since long. That can be disposed of as per submissions made by the learned counsels at the admission stage. Hence, the following substantial question of law is formulated,

‘Whether the operative portion in clause No.3 “alter the pleading if necessary”, is correct and proper ?’

7. Paragraph No.17 of the impugned judgment speaks that the application for adding defendants No.11 to 16 was allowed, but it was not effected. However, there appears a confusion about above clause.

8. The plaintiffs may be granted leave to effect the proposed amendment which was allowed by the learned trial Court and the words “alter the pleading if necessary” in the impugned judgment and order may be struck off. Hence, the substantial question of law is answered in negative. Hence, the order :-

ORDER

- i) The appeal is partly allowed.
- ii) The words “alter the pleading if necessary” mentioned in Clause No.3 of the operative part of the impugned judgment and decree are deleted; instead thereof, it be read as, ‘leave granted to effect the amendment as per the application to add respondents No.11 to 16 as defendants”
- iii) No order as to costs.
- iv) Pending civil application stands disposed of.
- v) Parties to appear before the trial Court on 03.01.2024.

**(S. G. MEHARE)
JUDGE**