

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

WRIT PETITION NO. 12813 OF 2022

SOPAN DNYANESHWAR PATANGE AND ANOTHER
VERSUS
SAYYED SALIM SAYYED FATTU AND OTHERS

...
Advocate for Petitioners : Mr. S.B. Kakde

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CORAM : ARUN R. PEDNEKER, J.
DATED : 09/01/2023

PER COURT :

1. By the present writ petition, the petitioners are challenging the order passed by the Waqf Tribunal, allowing the amendment application filed by the respondents herein. It is contended by the petitioners that the amendment changes the nature of the suit and as such, ought not to be allowed. By the proposed amendment, the plaintiff wanted to incorporate the contention about the mutation entry No. 3475 dated 29.8.2015 and order dated 23.1.2018 and subsequent letter dated 9.3.2021 issued by Sub Divisional Magistrate, Parli-Vaijnath. They further wanted declaration that survey Nos. 3, 4, 7, 105, 193, 194, 195, 196, 197, 134 and 135 situated at Sirsala, Tq. Parli-Vaijnath, Dist. Beed are waqf properties of the waqf institution Dargah Hazrat Shaikh Fariduddin Tawakali Graveyard and Masjid and further pray that possession of the same be handed over to the Waqf Board.

2. The earlier prayers of suit were as under :-

- "A. The suit may kindly be decreed with cost.
- B. An order of recovery of possession Survey no. 3, 4, 7, 105, 193, 194, 195, 196, 197, 134 and 135 situated at Sirsala, Tq. Parli-Vaijnath, Dist. Beed may kindly be awarded in favour of the plaintiff

- against the defendant No. 1 to 21.
- C. An order of perpetual injunction against the defendant no. 1 to 21 not to alienate, create third party interest or change the nature of Wakf property in any other form.
 - D. Any other suitable relief be granted in favour of the plaintiff which this Hon'ble Court deems fit and proper in the interest of justice and oblige."

3. It is to be noted that since the case of the defendants/petitioners is that the plaintiffs are not the owners of the suit property, the suit is amended for declaration and possession. I do not see that this amendment changes the nature of dispute. When the title of the plaintiff over the suit land is disputed by the defendants, the plaintiffs are entitled to amend the plaint and seek declaration of title along with possession and thus, the amendment application needs to be allowed. In view of the same, the order passed by the Waqf Tribunal does not suffer from any infirmity and thus, the writ petition is dismissed.

[ARUN R. PEDNEKER J.]

ssc/