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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.14543 OF 2019

Ehteshamuddin Imomudddin and Others

PETITIONERS

VERSUS

Sayyad Yusuf Ali Umar Ali and Others

RESPONDENTS

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Mr. R. S. Deshmukh, Senior Advocate a/w Ms. Rakshanda P. Jaiswal, Advocate for the petitioners

Mr. S. K. Shaikh, Advocate for respondents No.1 to 11

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 3rd JULY, 2023

ORDER :

1. The petitioners are aggrieved by the order dated 16th September, 2019 passed by the learned Civil Judge, Senior Division, Nanded below Exhibit-81 in Special Civil Suit No. 53 of 2010, thereby allowing the application filed by respondents – plaintiffs for amendment of the plaint under Order 6, Rule 17 of the Civil Procedure Code.

2. Respondent – plaintiffs have filed the suit for possession and permanent injunction. The defendants opposed the suit by filing written statement. The plaintiffs filed evidence affidavit. At this stage, the plaintiffs filed application Exhibit-81 seeking

amendment in the prayer clause, contending that inadvertently the prayer for declaration of ownership was remained to be mentioned in the plaint. The defendants opposed the said application. The Trial Court allowed the application. Hence the present writ petition.

3. Heard learned senior advocate for the petitioners and the learned advocate for the respondents. Perused the memo of the writ petition, documents annexed along with the same and the impugned order.

4. Learned senior advocate for the petitioners strenuously urged that by way of amendment, the auction sale in which predecessor in title of the petitioners purchased the suit property in the year 1966, is sought to be assailed by the respondent – plaintiffs.

5. It appears from the record that by allowing the amendment, nature of the suit does not change. The defendants are entitled to contest the statements made by way of amendment. The amendment would enable the Trial Court to effectively adjudicate the dispute between the parties. In that view of the matter, the Trial Court is justified in allowing the application Exhibit-81 for amendment.

6. By keeping the point of limitation open, to be adjudicated by the Trial Court on merits, at the time of final adjudication of the suit, the writ petition is disposed of.

[NITIN B. SURYAWANSHI]
JUDGE

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