

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13112 OF 2018

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| 1. Rajendra Balaji Jadhav | |
| 2. Vijay Balaji Jadhav | Petitioners |

Versus

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| 1. Subhash Shantaram Jadhav | |
| 2. Sau. Sunanda d/o Mahendra Sandane | |
| 3. Sau. Indrabai w/o Dnyaneshwar Patil | Respondents |

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Mr. Ajit D. Kasliwal, Advocate for Petitioners
Mr. P.A. Kulkarni, Advocate for Respondents
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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 30th JUNE, 2023

ORDER :

1. Petitioners are aggrieved by the order passed by learned Civil Judge, Junior Division, Vaijapur, below Exhibit-46 in Regular Civil Suit No.129 of 2011, thereby rejecting the Application filed by the defendants/petitioners under Order VI Rule 17 of the Code of Civil Procedure.

2. In the suit filed by the respondents/plaintiffs, permanent injunction is sought against the petitioners/defendants in respect of the suit property. Defendants appeared and resisted the suit by filing written

statement and counter claim. During the pendency of the suit, measurement of the suit property was carried out under the orders of the Trial Court. The plaintiffs examined the measurer/Court Commissioner during the trial. Thereafter, the defendants filed Application exhibit-46 seeking amendment claiming that in the evidence of measurer/Court Commissioner, it has come on record that the plaintiffs have encroached on 3 *Guntha* land of the defendants, therefore, they may be permitted to amend their counter claim and prayer clause, and incorporate the pleadings about the same. The said application is turned down by the Trial Court since the trial has commenced and also on that ground of lack of due diligence on the part of the petitioners. Hence, the present petition.

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

4. It is not in dispute that the amendment sought by the petitioners is in respect of subsequent events after the suit was instituted. Admittedly, it has come in the evidence of measurer/Court Commissioner that there appears encroachment on the part of the plaintiffs on 3 *Guntha* land of

the defendants. Since these are subsequent developments, the Trial Court ought to have allowed the amendment, so as to avoid multiplicity of the suit. For lack of due diligence, the plaintiffs could have been compensated. Since the impugned order is contrary to the settled legal position that amendment should be liberally allowed, so as to effectively decide the dispute between the parties and to avoid multiplicity of the suit, the impugned order cannot be sustained.

5. In the result, the writ petition is allowed.

6. Impugned order dated 11/10/2018 passed by learned Civil Judge, Junior Division, Vaijapur, below Exhibit-46 in Regular Civil Suit No.129 of 2011 is hereby quashed and set aside.

7. Application below Exhibit-46 is allowed.

8. The petitioners/defendants shall pay costs of Rs.5,000/- to the respondents/plaintiffs in the Trial Court.

9. Amendment to be carried out within two weeks from the date of receipt of writ of this order.

10. Taking into consideration the fact that the Suit is of the year 2011, the trial is expedited.

11. Parties shall co-operate.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane