



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11094 OF 2024

Akshatbhai Kaushikbhai Chudgar And Others

VERSUS

Shivram Venkateshrao Chaudhari And Others

- Mr. Y. P. Deshmukh, Advocate for the Petitioners
- Mr. D. M. Shinde, Advocate for the Respondents

CORAM : R.M. JOSHI, J

DATE : NOVEMBER 25, 2024

PER COURT :

1. Petitioners are the Defendants and are aggrieved by the impugned order passed below Exh. 23 dated 28.03.2023 in RCS No. 119/2022 on an application filed by the Plaintiffs under Order VI, Rule 17 CPC to amend plaint.

2. The facts, which led to filing of this petition, can be narrated as under:

Respondents/Plaintiffs filed suit before the Trial Court seeking injunction against Defendants. It is averred in the plaint that the Plaintiffs are owners of the suit property and hence, injunction is sought against the Defendants. In reply to Exhibit 5, Defendant Nos. 1 to 8 denied the ownership of the

Plaintiffs over the suit property. Pursuant to the said reply, an application Exh. 23 came to be moved for seeking amendment to the plaint and consequential relief of declaration that the Plaintiffs are the owners of the suit property.

3. Learned Counsel for the Petitioners/Original Defendants submits that the parties are litigating in respect of the subject property since 60's. Thus, it is his contention that practically Plaintiffs were aware of the fact that the Defendants are denying the title of the Plaintiffs over the suit property. It is in such circumstances it was essential for the Plaintiffs to take such plea and also to seek declaration at the time of filing of the suit itself. It is his contention that on the basis of replies filed by the Defendants, Plaintiffs cannot be permitted to amend plaint.

4. Learned Counsel for Respondents/Plaintiffs supported the impugned order.

5. There is no dispute about the fact that though there is a litigation between the Plaintiffs and

Defendants in respect of suit property before Revenue Authorities as well as Authorities under the Fragmentation and Consolidation Act. However, though Authorities undisputedly are not the proper Authorities to decide the ownership and title of the parties in the suit property. Present suit is the first litigation between the parties wherein the issue of ownership has arisen. The Plaintiffs have filed suit with a specific plea that they are the owners of the property and, therefore, injunction is sought against the Defendants. Once in the reply filed by the Defendants title of the Plaintiffs with regard to the suit property is disputed, it is open for the Plaintiffs to seek declaration thereof. Application filed by the Plaintiffs is nothing but a consequence to denial of their title in the reply filed by the Defendants.

6. Having regard to these facts and also in view of the fact that the amendment is sought before the commencement of trial, there is no impediment in allowing the application. The learned Trial Court has rightly taken into consideration the relevancy of the pleadings. This Court finds no perversity in the

impugned order. As such, the Petition does not deserve to be entertain. Hence, Petition stands dismissed.

(R.M. JOSHI, J.)