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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2575 OF 2024

Indubai Hiranman Choudhari and Ors.

.. Petitioners

Versus

Jayant Maniklal Lunawat and Ors.

.. Respondents

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- Mr. Namit Pansare, Advocate for Petitioners.
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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 27, 2024.

P.C.:

- 1.** Heard Mr. Pansare, learned Advocate for Petitioners.
- 2.** Writ Petition takes exception to the order dated 20.01.2024 passed by the learned Trial Court in Application filed below Exhibit “158” which is at Exhibit “J” - page No.147 of the Writ Petition.
- 3.** Originally, Regular Civil Suit No.236 of 2015 is filed for seeking possession of the Suit property only. Written statement is filed on 02.12.2015. Issues are framed on 30.07.2016. In the year 2018, Plaintiffs filed Application below Exhibit “35” which is allowed on 20.02.2018. Thereafter, Plaintiffs filed Application below Exhibit “55” for seeking declaration in respect of the Suit property which stands allowed on 03.04.2021 with respect to the amended Suit plaint. Additional written statement was filed on 24.02.2022. Plaintiffs filed

their Affidavit-in-Reply on 07.04.2022. However on 14.11.2022, Plaintiffs filed third amendment Application below Exhibit “158” for injunction.

4. On perusal of the amendment Application which is at Exhibit “H” - page No.136 of the Writ Petition, it is seen that in respect of Suit proceedings there are several orders passed against the Plaintiffs and Plaintiffs are aggrieved with an order passed on 19.07.2022 and therefore the Plaintiffs now approached this Court by Application under Exhibit “158” to incorporate an amendment seeking permanent injunction against the Defendants on the basis of substantive pleadings in RTS proceedings which emanate from a challenge maintained to a judgment in Suit No.17 of 1957 based on which possession was handed over on 29.04.1978 in respect of the Suit property.

5. There are mutation entries, rather long standing mutation entries which have achieved presumptive character under Section 157 of the Maharashtra Land Revenue Code, 1966 from 1949 to 1972 which are the subject matter of RTS proceedings which are delineated in the amendment Application.

6. *Prima facie*, the entire facts of the amendment Application was known to the Plaintiffs even before filing of the Suit in the year 2015 itself. No due diligence whatsoever is shown by the Plaintiffs is the Application filed under Order VI Rule 17 of the Code of Civil

Procedure, 1908 and curiously by virtue of the order dated 20.01.2024, the learned Trial Court has allowed the amendment Application on the premise that these are very peculiar circumstances and it is not reasonable to deny the proposed amendment on the ground of due diligence since all issues between the parties can be dealt with in one Suit proceedings only.

7. The next important reason which is given by the learned Trial Court is that the amendment is necessary in order to determine the real controversy between the parties. It is seen that the Suit is originally filed for possession. It is amended after five years by introducing the prayer for declaration and injunction and two years thereafter a third amendment Application is filed for introducing the prayer for permanent injunction and in the meanwhile Plaintiff is busy prosecuting the RTS proceedings and having failed therein has come with amendment Application. It is seen from the amendment Application itself that challenge to the order dated 15.07.2022 in RTS proceedings is pending before the Hon'ble Minister.

8. Apart from non-compliance of due diligence, I am of the clear opinion that such an amendment is not permissible in law and the Application is nothing but to protract the Suit proceedings. Be that as it may, I will hear the Respondents / Plaintiffs.

9. In the meanwhile, it is directed that the learned Trial Court shall not proceed with the hearing of Regular Civil Suit No.236 of 2015.

10. Issue notice to the Respondents. Humdast permitted.

11. In addition to Court notice, Petitioners are permitted to serve a copy of the Petition and this order on the Respondents and inform them about the next date of hearing by any permissible mode of service and file appropriate Affidavit of service with tangible proof thereof on or before the next date.

12. Respondents are directed to remain present in Court on the next adjourned date either by themselves or through Advocates.

13. Respondents are directed to file their Affidavit-in-Reply on or before the next date, if so desired.

14. It is clarified that, this Writ Petition shall be disposed of on the next adjourned date at the stage of admission itself.

15. Stand over to **12th March, 2024**.

[MILIND N. JADHAV, J.]