



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

7 WRIT PETITION NO. 3290 OF 2024

HAMID ISMAIL PATHAN AND ANOTHER
VERSUS
MEHMUDABI SHABBIR ATTAR AND ANOTHER

Mr. Shaikh Mazhar A. Jahagirdar, Advocate for the petitioners
Mr. S. N. Kandre, AGP for the respondent/State

CORAM : R. M. JOSHI, J.

DATE : 3rd FEBRUARY, 2025

PER COURT :-

1. This petition takes exception to the order passed below Exhibit 48 in R.C.S. No. 211/2016. Admittedly petitioners are not party to the said proceeding however, they filed application under Order 6 Rule 17 of the Code of Civil Procedure (for short 'CPC') for amendment to the plaint. There cannot be any two opinions that the plaint cannot be amended by the person who is not the plaintiff. Thus, on this count no interference is caused in the impugned order.

2. Even if it is assumed that the provisions of Order 6 Rule 17 of the CPC is invoked incorrectly and the application is treated an application under Order 1 Rule 10 of CPC, it is necessary for the applicant to show that his presence in the suit is necessary for the adjudication thereof. Unless the party shows that he is proper and

necessary party, he cannot be permitted to be impleaded a party therein.

3. The suit in question is filed by mother and grand mother of the petitioners. In the application for impleadment Exhibit 48 it is simply claimed that the petitioners are staying in the suit premises. The said statement will not create in title and interest in favour of the petitioner. The suit in question is for the injunction. Admittedly, plaintiff has failed to obtain any interim injunction against defendant. Exhibit 5 stood rejected. It is thereafter the present petitioner moved application for amendment to the plaint and to join them as party to the plaint.

4. In absence of they being necessary or proper party, there was no question for the Trial Court to allow such application. Trial Court therefore rightly rejected the application. Hence petition has no merit. Hence, petition stands dismissed.

(R. M. JOSHI, J.)

ssp