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949-WP-10610-18

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

949 WRIT PETITION NO. 10610 OF 2018

BABURAO BHUJANGRAO KADAM

VERSUS

SUNIL YASHWANTRAO PATIL THROUGH LRS SONALI SUNIL PATIL AND
OTHERS

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Advocate for the Petitioner : Mr. J. S. Kadam h/.f Mr. V. D. Salunke
Advocate for Respondent No.1A : Mr. D. A. Mane h/f. Mr. P. A. Bharat
Advocate for Respondent No.1C : Mr. D. M. Pingale
Advocate for Respondent Nos.5B and 2 : Mr. N. G. Talekar

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CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : 04.04.2025

PER COURT :-

1. Heard the learned counsel for the petitioner and the learned counsels for respondent Nos.1A, 1C, 2 and 5B.
2. The petitioner has challenged order dated 17.03.2018 passed by the learned Civil Judge, Junior Division, Lohara, Dist. Osmanabad, in Regular Civil Suit No.19 of 2009 by which, the application for amendment is allowed.
3. Mr. J. S. Kadam, learned counsel for the petitioner, submits that the application for amendment was filed to incorporate various factual aspects

as well as a prayer seeking possession and ownership with respect to the suit property bearing Gat No.239. It is submitted that the suit filed initially was for claiming the relief of permanent injunction only. After the land was measured by the Commissioner, the amendment application is filed to incorporate pleadings and new prayer clause. He submits that amendment to claim relief of possession and ownership changes the nature of the suit. He further submits that the amendment application is filed after the evidence was started in the civil suit and proposed amendment will cause serious prejudice to the rights of the plaintiffs. In support of his submissions, he relies on the judgment in the case of *Abdul Aziz Bhat v. Mohammad Iqbal Bhat and Ors.* reported in *AIR Online 2022 J and K 753* and the judgment of *Hon'ble Supreme Court in Civil Appeal No.1669 of 2019* in the case of *M. Revanna vs. Anjanamma (Dead) by Lrs. and Ors.*

4. Per contra, Mr. Mane, learned counsel for respondent No.1A strongly opposes the petition and submits that the proposed amendment are filed on the basis of measurement of the land by the Commissioner and the same are filed without delay. He submits that by the proposed amendment, no relief is claimed against the defendant No.2 who is the petitioner herein. He therefore submits that, in fact the petitioner cannot be said to have any

grievance against the amendment since no relief is sought against him. He submits that proposed amendment is necessary for complete and effective adjudication of the suit. He submits that the petitioner does not have any locus to raise challenge to the impugned order. Adv. D. M. Pingle, for respondent No.1C, Adv. N. G. Talekar, for respondent Nos.5B and 2 adopt the arguments of Adv. D. A. Mane.

5. The rival contentions of the parties are considered and the papers are perused.

6. Perusal of the impugned order shows that the Trial Court after referring briefly to the contentions of the parties, has given only one reason for allowing the amendment which is “to avoid multiplicity of proceedings, amendment is necessary”.

7. In view of proposed amendment, it becomes clear that the plaintiffs had proposed to incorporate certain factual aspects and have also prayed for an amendment of prayer clause by adding the prayer of possession and ownership. Further, the amendment application was filed after the evidence is started. As such, the most vital issues about change in the nature of the suit and the issue about ‘due diligence’ of the plaintiffs are not at all

considered by the Trial Court while deciding the amendment application. Perusal of the impugned order clearly shows that after referring to the submissions of the parties and the fact of measurement of land, the Trial Court has allowed the application to avoid multiplicity of proceedings. The impugned order is passed apparently without considering the crucial aspects necessary for deciding the amendment application. The order is cryptic, unreasoned and therefore not sustainable. The Trial Court was required to consider all the necessary aspects including change in nature of the suit and due diligence while deciding the amendment application. Since the impugned order did not deal with these crucial aspects, the matter needs to be remanded to the Trial Court for deciding the amendment application afresh. Hence I pass the following order :

ORDER

- i. The writ petition is partly allowed.
- ii. The impugned order dated 17.03.2018, on an application at Exhibit-108 passed by the learned Civil Judge, Junior Division, Lohara, Dist. Osmanabad, in Regular Civil Suit No.19 of 2009 is quashed and set aside.

iii. The Trial Court is directed to hear and decide the application for amendment (Exh-108) afresh after giving due opportunity of hearing to both the parties.

iv. Since the suit is of the year 2009, the Trial Court is directed to decide the suit expeditiously.

v. The writ petition is partly allowed. No order as to costs.

(PRAFULLA S. KHUBALKAR, J.)

PRW