

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2035 OF 2015**

Shaikhddin Balabhai Mulani (deceased) through LRS & Ors
..Petitioners

Vs.
Shahiramard Shaikhaddin Mulani & Ors. **..Respondents**

Mr. Samir Kumbhakoni for the Petitioners

CORAM : R. M. SAVANT, J.
DATE : 13th MARCH, 2015

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 25-11-2014 passed by the Learned Civil Judge Junior Division, Mangalwedha, by which order, the application for amendment of the plaint, came to be dismissed.

2 The Petitioners are the heirs of the original Plaintiff who by filing the instant Suit being Regular Civil Suit No.144 of 2001 had sought declaration in respect of the decree passed in Regular Civil Suit No.27 of 1995, as confirmed in Regular Civil Appeal No.18 of 1998, as not binding upon him. The original Plaintiff i.e. the father of the Petitioners has expired on 26-3-2006. Paragraph 7 of the plaint contains the averments as to the marriage of the Plaintiff with one Saira B. Mujawar. It is averred in the said paragraph that the said Saira Mujawar was already married to Tajuddin N. Molani. The Plaintiff's marriage with the said lady was illegal. Pertinently in the prayers no reliefs

were claimed based on the said averments. As indicated above the relief sought is of declaration as regards the decree passed in Regular Civil Suit No.27 of 1995 as not binding on the Plaintiff. The issues in the instant Suit came to be framed on 12-3-2004. The original Plaintiff has thereafter expired on 26-3-2006, the instant application Exhibit 66 has been filed by the heirs on 11-1-2013 for incorporating a prayer for declaration in respect of the marriage of the original Plaintiff with the said Saira.

3 The Trial Court has rejected the said application on the ground that the original Plaintiff had never sought any such relief in the Suit as originally filed as also on the ground that the application has been filed long after the issues have been framed and the Suit has proceeded to trial. The Trial Court has also observed that the averments regarding Resjudicata are also not necessary to be incorporated.

4 In my view, having regard to the reasons mentioned in the impugned order, no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]