

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

WRIT PETITION (STAMP) NO.2603 OF 2015

**Shri. Dhondiba @ Babu Khandu Khaire
(Since deceased through his legal heirs)**

Baburao Dhondiba Khaire and others

.. Petitioners

Versus

Shri. Parshuram Genu Khaire and others

.. Respondents

Shri. Chaitanya Nikte, for the Petitioners

CORAM : R.M. SAVANT, J.

DATE : 12th MARCH, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 09.11.2014 passed by the Learned District Judge, Pune, by which order the application Exh.39 for amendment of the plaint filed at the appellate stage came to be dismissed. The Petitioners herein are the original Plaintiffs who have filed the suit in question being Regular Civil Suit No.81 of 2003 for injunction. It is required to be noted that the Trial Court i.e. Learned Civil Judge, Junior Division, Ghodnadi by judgment and order dated 28.04.2012 dismissed the suit and decreed the counterclaim filed by the Defendants and directed the Plaintiffs to hand over possession of Northern side 1 Hecter 32 Ares in block No.33 (old block No.2029)

situated at Mouje Khairewadi, Tal. Shirur, Dist-Pune. The Petitioners i.e. original Plaintiffs are in Appeal against the said order and have filed Regular Civil Appeal No.596 of 2012. It is in the said Appeal that the instant application for amendment of the plaint came to be filed on 24.04.2014 seeking to amend the plaint so as to incorporate a prayer for declaration of ownership. The Trial Court has rejected the application on the ground that the Plaintiffs have not stated the reasons as to why they could not bring the application for amendment before the commencement of the trial in the suit and accordingly rejected the said application by the impugned order dated 09.11.2014. As indicated above, the suit has been filed for simplicitor injunction, which has been dismissed. However, the counterclaim filed by the Defendants in respect of 1 Hecter 33 Ares has been decreed. Hence, apart from the fact that the amendment is sought at the appellate stage that too long after Appeal was filed in the year 2012. It is also required to be noted that if the amendment is allowed, the nature of the suit would change from that of one being for injunction to that of one being for declaration of title of ownership and injunction and that too at the appellate stage, which is impermissible. The Learned Counsel appearing on behalf of the Petitioners i.e. original Plaintiffs Shri. Chaitanya Nikte seeks to rely upon the judgment of the Apex Court reported in **AIR 2004 SC 4102** in the matter of **Pankaja and another Vs.**

Yellappa (D) by L.Rs. and others. The said judgment would have no application in the facts of the present case, as the Apex Court in the said case was concerned as to the matters to be considered whilst considering the application for amendment of the plaint after commencement of the trial. The Learned Counsel also relied upon the judgment of the Apex Court reported in (2012) 11 SCC 341 in the matter of Abdul Rehman. and another Vs. Mohd. Ruldu and others. It is in the facts of the said case where the Apex Court held that by the amendment sought what was implicit was sought to be made explicit permitted the amendments. The facts of the said case therefore are distinguishable from the facts of the instant case. As indicated above, in the instant case the application for amendment has been filed long after the suit has been dismissed and the counterclaim decreed and also the Appeal being filed. The moving of the amendment application is sought to be justified on the basis of the findings which have been recorded by the Trial Court whilst dismissing the suit, that cannot be a ground for moving the application for amendment of the plaint in a suit which has been dismissed. In that view of the matter, no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]