

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3867 OF 2013**

1 Kondiba Nivrutti Ingole	)	
Age 72 Occ Agri	)	
2 Vishvambhar Nivrutti Ingole	)	
Age 67 Occ Agri	)	
3 Ambadas Nivrutti Ingole	)	
Age 62 Occ Agri	)	
All r/ Tal Sangola Dist Solapur	)	..Petitioners

Vs.

1 Suman Maruti Kumbhar	)	
Age 59 Occu Agri r/o At Jamkhed	)	
Tal Jamkhed Dist Amhmadnagar	)	
2 Popat Shamrao Ingole	)	
Age 62 Occ Agri	)	
3 Laxman Shamrao Deshmukh	)	
Age 39 Occ Agri	)	
Both r/o At Sangola Tal Sangola	)	
Dist Solapur	)	..Respondents

Mr. A. A. Joshi for the Petitioners
Ms Poonam Bhosale for the Respondent No.1

CORAM : R. M. SAVANT, J.
DATE : 15th OCTOBER, 2015

ORAL JUDGMENT

1 The Writ Jurisdiction of this Court is invoked against the order dated 8-1-2013 passed by the Learned Civil Judge Junior Division, Sangola, by

which order, the Application Exhibit 19 filed by the Defendant i.e. the Petitioner herein for amendment of the Written Statement came to be rejected.

2 The Suit in question is filed by the Respondents / Plaintiffs for injunction and possession of the suit property. The Plaintiffs rely upon a Sale Deed dated 29-10-1979 in support of their claim which Sale Deed is allegedly executed by the father of the Defendant Nos.1 and 3. The Defendants filed their Written Statement and questioned the Sale Deed. It was their case that the signatures obtained on a blank paper by the husband of the Plaintiff from the father of the Defendants has been misused by the Plaintiff and has got executed the Sale Deed from the father of the Defendants. By the amendment sought to the Written Statement, the Defendants now seek to take a stand that the husband of the Plaintiff could not have purchased the suit property in view of the fact that he was not an agriculturist. The Defendants also seek to set up title by the adverse possession. The said amendment application was replied to on behalf of the Plaintiff.

3 The Trial Court has considered the said application and has rejected the same by the impugned order. The rejection is on the ground that the Defendants are now by virtue of the amendment sought seeking to take inconsistent and self contrary pleadings and therefore if the amendment is allowed, the same would cause prejudice to the Plaintiff. In so far as the

amendment to the Written Statement is concerned, it is trite that the Defendants are entitled to take consistent defences. It is also trite that consideration of an application for amendment of the Written Statement stands on a different footing than the consideration of an application for amendment to the plaint. In the instant case, admittedly the issues have not been framed and it is therefore prior thereto that the amendment application was filed by the Defendants. In my view the Trial Court has erred in rejecting the application by the impugned order, the impugned order would have to be quashed and set aside and is accordingly quashed and set aside. Resultantly the application Exhibit 19 for amendment of the Written Statement stands allowed. The Defendants would be entitled to amend the Written Statement in terms of the amendment sought. The Defendants to carry out the amendment in the Written Statement within 6 weeks from date. The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs of the Petition.

[R.M.SAVANT, J]