

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

WRIT PETITION (STAMP) NO.14085 OF 2015

Shri. Subhash Jaisingh Rao Nawle

(Since deceased through his legal heirs)

Mr. Sagar Subhash Nawle and others

.. Petitioners

Versus

Shri. Ashok Jaising Rao Nawle and others

.. Respondents

Mr. Tejas Dande i/by Tejas Dande & Associates, for the Petitioners.

CORAM : R.M. SAVANT, J.

DATE : 07th SEPTEMBER, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 20.08.2014 passed by the Learned District Judge-15, Pune, by which order the Application Exh.24 filed by the Petitioners/original Appellants in Civil Appeal No.746 of 2012 came to be rejected. The said application was for amendment of the plaint so as to incorporate averments as to why the Plaintiffs i.e. heirs of Shri. Subhash Jaising Rao Nawale could not lead evidence of the attesting witness and the Sub Registrar. The Plaintiffs have a decree of dismissal passed against them in Special Civil Suit No.619 of 2000 and in the context of the present Petition one of the finding recorded by the Trial Court is material and is reproduced hereinunder :-

“At least one attesting witness is not examined by the

Plaintiffs. It is not pleaded that the witnesses are not alive or incapable of giving evidence or beyond the process of Court. Likewise other scribe, Sub-Registrar or Adv. Naik are not examined for the reasons best known to the Plaintiffs. No explanation has been given for non-examination of all above persons or any out of them.”

It is prompted by the said finding recorded by the Trial Court that the instant application for amendment of the plaint seems to have been triggered of. The Lower Appellate Court however tested the case of the Plaintiffs as to whether the said amendments are necessary for an adjudication of the Appeal. The Lower Appellate Court observed that the Plaintiffs/Appellants have already raised the said grounds vide grounds “j” to “p” of the memo of an appeal and it would be therefore open for the Appellants to urge the said grounds at the hearing of the Appeal. In my view, the order passed by the Lower Appellate Court rejecting the application for amendment on the grounds mentioned in the impugned order and especially having regard to the finding recorded by the Trial Court which findings revolves around whether the Will has been approved by the Plaintiffs or not cannot be faulted with. No case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]

Certified to be true and correct copy of the original signed order.