

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

WRIT PETITION NO.8699 OF 2015

Mr. Anthony Rock Paul

.. Petitioner

Versus

Smt. Laxmibai Baban Saste and others

.. Respondents

Shri. P. B. Shah, Counsel a/w Shri. K. P. Shah, for the Petitioner.

CORAM : R.M. SAVANT, J.

DATE : 2nd SEPTEMBER, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 20.07.2015 passed by the Learned 3rd Joint Civil Judge, Junior Division, Pimpri, Pune, by which order the Application Exh.135 filed for amendment of the Written Statement came to be rejected. The Petitioner is the original Defendant to the suit in question being Regular Civil Suit No.197 of 2006. The said suit has been filed invoking Section 6 of the Specific Relief Act for claiming possession. The suit has progressed to the stage where the cross-examination of the Plaintiff is complete and it is at the said stage that the instant application came to be filed on 20.11.2014 seeking amendment in the Written Statement so as to make a reference to two correction deeds to the original Sale Deed. The Trial Court having regard to the stage at which the suit was, applied the judgment of a

Learned Single Judge of this Court reported in 2010(1) Mh.L.J. 810 in the matter of Prakash Ratanlal @ Ratansa kasari Vs. Bhika s/o Banda Dhage and another. In which judgment reliance is placed on the judgment of the Apex Court in Vidyabai and others (supra) 2009(4) Mh.L.J. (SC) 30 ALL MR 471, in which case the Apex Court has laid down that after the trial commences, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter, the application for amendment cannot be allowed. In the facts of the instant case, where the Defendant has not come out with any justifiable reason as to why the said documents were not referred to earlier, has come to a conclusion that the due diligence test has not been satisfied by the Defendant. There is no dispute as regards the stage at which the suit is at present, there is no justifiable reason forthcoming as to why the said documents were not relied upon earlier though according to the Learned Counsel for the Petitioner they are crucial documents. In my view, the conclusion drawn by the Trial Court that the Defendant has not satisfied the due diligence test, therefore, cannot be faulted with. Hence, no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]