

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

WRIT PETITION NO.10702 OF 2014

Shri. Vishnu Baburao Gaikar and others .. Petitioners

Versus

Shri. Popat Punja Gaikar and others .. Respondents

Mr. M. M. Sathaye, Advocate for the Petitioners.

CORAM : R.M. SAVANT, J.

DATE : 23rd JANUARY, 2015

PC.

1. The writ jurisdiction of this Court is invoked against the order passed by the Learned 6th Joint Civil Judge, Senior Division, Nashik, by which order the application Exh.36 filed for amendment of the plaint so as to incorporate averments in respect of Partition Deed dated 23.09.1983 and to challenge the said Partition Deed which is rejected is taken exception to by way of the above Petition.

2. The Trial Court has rejected the said application on the ground that the Plaintiffs were very well aware of the said Partition Deed dated 23.09.1983, since to the notice of the Plaintiffs dated 09.09.2012 the Defendants had replied by their letter dated 12.09.2012, wherein they had referred to the said Partition Deed. The suit has been filed thereafter

on 13.12.2012. Apart from the said fact that the Trial Court has also observed that there are signatures of the Plaintiffs on the said Partition Deed, not only this, the Plaintiffs have also accepted the amount of Rs.4,000/- and therefore, the Partition Deed has been acted upon. In my view, having regard to the facts as aforesaid, the same belie the case of the Plaintiffs that they became aware of the Partition Deed only after the written statement was filed by the Defendants. Hence, the refusal of the Trial Court of permitting the Plaintiffs to amend the plaint cannot be taken exception to. No case for interference in the writ jurisdiction of this Court is therefore made out. The Writ Petition is dismissed.

[R.M. SAVANT, J]