

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 8322 OF 2015

Gajanan Devidas Sonawane

(Died) Through L.Rs.

Vijaya Gajanan Sonawane and Others

..PETITIONERS

VERSUS

Gangabai Shivdas Patil and Others

..RESPONDENTS

....

Mr. V.D. Hon, Senior Advocate i/b Mr. A.V. Hon, Advocate for petitioners.

Mr. P.B. Patil, Advocate for Respondent Nos. 1 to 9.

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CORAM : T.V. NALAWADE, J.

DATED : 07th DECEMBER, 2016

ORDER :

1. The petition is filed to challenge the order made by the District Judge, Jalgaon on Exhibit 27 in Regular Civil Appeal No. 107 of 2009. Both sides are heard.

2. Regular Civil Suit No. 201 of 2004 was filed by present respondents for relief of partition, possession and declaration. The suit came to be decreed in their favour and the Trial Court has held that each plaintiff has 1/25th share in the suit property and partition is ordered by

this decree. This decision is challenged by present petitioners by filing Regular Civil Appeal No. 107 of 2009. At Exhibit 27 in the appeal, application was moved by present petitioners for permission to seek amendment of written statement filed in the Trial Court. It is the contention of the appellants that plaintiffs have concealed the information about the properties like Gut Nos. 1051/1 and 1052/1 admeasuring 1.66 H and 1.88 H respectively and only the properties which are with defendants are mentioned in the plaint. It is contended that these properties were given to the share of Nilkanth Totaram Patil and Shivdas Totaram Patil and so sale deed was executed in their favour. Appellants / preset petitioners want to add that contention in the written statement.

3. The Trial Court has held that no diligence was shown and even when appeal was pending for about six years, steps were not taken at the earliest and so the amendment cannot be allowed.

4. Without going into the merits of the matter, it can be said that if aforesaid properties are joint family properties, it will be open to the petitioners to claim partition even by separate suit if they are not included in the suit by present plaintiffs. The possibility that the present petitioners/defendants are trying to protract the partition of the property

involved in the present matter cannot be ruled out. There were sale deeds and this circumstance can be considered for present purpose.

5. This Court holds that it is not possible to interfere in the order made by the District Court in the appeal. In the result, petition is dismissed. Amount if any deposited by present petitioners/appellants is allowed to be withdrawn by present respondents/defendants.

(T.V. NALAWADE, J.)

SSD