

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2372 OF 2016**

Dr. Arun Anant Salunkhe and
Anr

Petitioners

Vs

Mrs.Meena Sharad Dikshit & Anr.

.. Respondents

Mr. Mandar Limaye a/w Mahendra Agvekar, Advocate for
Petitioners.

CORAM : R.G.KETKAR,J.

DATE : 24/02/2016

PC:

1. Heard Mr. Mandar Limaye, learned counsel for the petitioners at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the Judgment and order dated 24.11.2015 passed by the learned Ad-hoc District Judge-3, Pune, below Exhibit-14, in Civil Appeal No.302 of 2014. By that order, the learned District Judge dismissed the application made by the petitioners, hereinafter referred to as 'plaintiffs', under Order VI, Rule 17 of C.P.C.
3. The plaintiffs instituted suit against the respondents, hereinafter referred to as 'defendants', inter-alia restraining them from blocking and/or causing hindrance to the ingress and egress to the plaintiffs' vehicle that are parked in suit property, i.e. Garage no.6; for mandatory injunction directing the defendants to remove the earthen pots and plantations that have

been put before Garage No.6 and prohibiting them from creating any hindrance in the said ingress and egress; for mandatory injunction directing the defendants not to lock the main gate to the internal road through which there is access to the garage.

4. The defendants filed written statement resisting the suit. It was, inter-alia, contended that the plaintiffs have suppressed material facts. Out of block no.6 only the front side portion admeasuring 50'x49'.6", marked by letters as 'ABCD' in the registered agreement dated 31.1.2002 was given by defendants to M/s Salunkhe Builders for development. On the basis of pleadings of the parties, the learned trial Judge framed necessary issues. Plaintiff no.1 examined himself as PW 1 at Exhibit 54 and produced documentary evidence on record. The defendants examined defendant no.2 as DW 1 and filed documentary evidence, namely, Development Agreement dated 31.1.2002 at Exhibit-70. On 16.4.2014, the learned trial Judge dismissed the suit.

5. Aggrieved by that decision, the plaintiff preferred Appeal. During pendency of the Appeal, they took out application Exhibit-14 under Order VI, Rule 17 of C.P.C. for amending the plaint. By the proposed amendment, the plaintiffs want to incorporate paragraphs 12-A to 12-H. By the impugned order, the learned District Judge rejected the application. Mr. Limaye reiterated the submissions that were advanced before the learned District

Judge.

6. The learned District Judge rejected the application on the ground that DW 1 has produced the Development Agreement at Exh.70. The learned counsel for the plaintiffs examined DW 1 on 24.3.2014. The learned District Judge observed that the Development Agreement was filed by defendant no.1 prior to 21.8.2012 and DW 1 was also cross examined by the plaintiffs on 24.3.2014 where she has referred to the development agreement. The learned District Judge, therefore, observed that though the plaintiffs were aware of execution of the development agreement, they did not make application for amending the plaint before the trial Court. The application made by the plaintiffs was, therefore, malafide and dishonest. The learned District Judge also referred to the decision of Rameshkumar Agrawal Vs. Rajmala Exports Pvt Ltd, reported in AIR 2012 S.C. 1187, wherein in paragraph 11 it was observed that “while deciding the application for amendment, ordinarily the court must not refuse bonafide, legitimate, honest and necessary amendments and should never permit malafide and dishonest amendments. The learned District Judge rejected the application on the ground that the proposed amendment was malafide and dishonest and also held that the application was moved belatedly and as and by way of an after thought.

7. In view thereof, I do not find that the learned District Judge

committed any error in passing the impugned order. Hence, Petition fails and the same is dismissed. It is, however, expressly made clear that where a decree is challenged by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in Memorandum of proceedings as contemplated by Section 105(1) of C.P.C.

(R.G.KETKAR, J.)