

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

WRIT PETITION NO. 10367 OF 2016

Sou.Sunita Vilas Salunkhe & ors.,
All R/o Kalamaruti Chowk, 3079/B,
Pandharpur, Dist. Solapur.

... Petitioners

v/s

Smt.Fulabai @ Suman Sshankar Kale,
R/o. Near Kaikadi Maharaj Mutt,
Tal. Pandharpur, Dist.Solapur; & ors.

... Respondents

Mr.V.S.Talkute for the petitioners.

Coram: N.M. Jamdar, J.

Dated: 6 October 2016

ORAL ORDER:

The Petitioners have challenged the order passed by the learned Civil Judge, Junior Division, Pandharpur, dated 3 March 2016, rejecting the application filed by the Petitioners for amending the written statement.

2 Heard learned counsel for the Petitioners.

3 The amendment is rejected primarily on the ground that the Petitioners were aware of the facts which are sought to be pleaded and

that the amendment has been moved at a belated stage. If the application for an amendment is perused, the reason given for amendment of the written statement is that the Respondents/Plaintiffs have produced certain documents, such as, certified copy of the Suit No.133 of 1995, in which it is mentioned that Babu Sitaram Chavan expired in the year 1952 and Jijabai expired in the year 1955, and in view of these facts the Petitioners have sought to incorporate two grounds that Respondents/Plaintiffs should have disclosed when Babu and Jijabai expired and the Respondents/Plaintiffs suppressed this position. Second amendment that is sought is that, in view of death of these two persons, Respondents/Plaintiffs are not entitled under the provisions of the Hindu Succession Act.

4 The fact that the certified copy of the Regular Civil Suit No.133 of 1995 is placed on record by the Respondents/Plaintiffs, is not disputed. That the Respondents/Plaintiffs did not disclose the factual position which is averred in the plaint of the Regular Civil Suit No.133 of 1995, is an argument the Petitioners can always make. For that purpose an amendment is not required. As far as the provisions of Hindu Succession Act is concerned, that is a legal argument based on the certified copy of Regular Civil Suit No.133 of 1995. Since the Petitioners can always advance the arguments which are sought to be incorporated by way of an amendment, it is not necessary to entertain the petition. It appears that, inspite of this clear position, the

amendment sought is only to prolong the hearing of the suit. With this clarification, the writ petition is disposed of.

(N. M. Jamdar, J.)