

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13176 OF 2016**

Shri Sunil Vyankatesh Kulkarni and Ors.	Vs	Petitioners
Vyankatesh D. Kulkarni and Ors.		.. Respondents

Mr. S.A.Rajeshirke, Advocate for Petitioners.

CORAM : R.G.KETKAR,J.
DATE : 28/11/2016

PC:

1. Not on Board. At the request of Mr. Rajeshirke, taken up for admission. Heard Mr. S.A.Rajeshirke, learned counsel for the petitioners at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as 'plaintiffs', have challenged the Judgment and order dated 28.3.2016 passed by the learned trial Judge below Exhibit-115 in Regular Civil Suit No.48 of 2005. By that order, the learned trial Judge allowed application-Exhibit-115 made by defendants no. 7 and 8 under Order VI, Rule 17 of C.P.C for incorporating paragraph 14A in the written statement. By paragraph 14A, defendants no. 7 and 8 have contended that in case the property purchased by them is liable for partition, in that event, defendants no. 7 and 8 may be allotted share in the property purchased by them.
3. Mr. Rajeshirke submitted that defendants no. 7 and 8 cannot claim share in a particular property which is purchased by

them. At the highest, they are entitled to share of their vendor in the properties of the joint family and not specific property which is claimed to have been purchased by them from their vendor.

4. By the impugned order, the learned trial Judge has allowed the amendment. For the reasons stated in paragraph 5 of the impugned order, I do not find that the learned trial Judge has committed any error in allowing the application. The submission of Mr. Rajeshirke that in paragraph 5 the learned trial Judge has recorded a finding that defendants no. 7 and 8 are entitled to get the purchased portion, requires to be set aside, cannot be accepted. By granting amendment, the Court has not accepted the case made out by defendants no. 7 and 8. Defendants no. 7 and 8 will have to establish their case.

5. Mr. Rajeshirke submitted that, at any rate, the learned trial Judge was not justified in allowing the application after the commencement of the trial. I do not find any merit in this submission as well. Even in the absence of amendment, in the event of property being allotted to their vendor in the partition suit, they are entitled to claim allotment of that property before the trial court. Hence, I do not find any merit in this submission as well. Petition fails and the same is dismissed.

6. All the contentions of the parties in that regard are expressly kept open before the trial Court. Order accordingly.

(R.G.KETKAR, J.)