

Sequeira

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

WRIT PETITION NO. 3546 OF 2015

Shri Shamrao Dadu Koli & ors. .. Petitioners

Vs.

The Gramvistar Adhikari,
Gram Panchayat, Padmale, Sangli & ors. .. Respondents

Mr.Sandesh Patil a/w Ms.Anusha Amin, for Petitioners.

None for Respondents.

***CORAM : N.M.Jamdar, J.
Tuesday, 16 August 2016.***

P.C. :

By this petition, the Petitioners challenge the order passed by the learned Civil Judge Junior Division Sangli, dated 28 April 2014 below Exhibit no.56 rejecting the Application filed by the Petitioners-Plaintiffs for amendment of plaint.

2. The suit was filed by the Petitioners-Plaintiffs in the year 2009 in which a declaration of ownership on the basis of a sale deed of 15 March 1943 was sought and relief of injunction was also sought against Respondent Nos.1 to 5 – Defendant No.1. On 19 December 2013, four years after filing the suit, an application for amendment was moved by the Petitioners seeking to add proposed Defendant Nos.7 to 19 and seeking possession of the suit property from these Defendants. This Application was rejected by the learned District Judge by the impugned order.

3. Heard learned counsel for Petitioners. The learned counsel for Petitioners submitted that if the amendment is not granted, failure of justice would occasion and the relief of possession which is sought will be lost. The learned Judge has exercised his discretion in not granting the amendment. The learned Judge has noted that the suit has reached the stage of hearing and is part-heard. If the Application is seen there is absolutely no explanation whatsoever as to why the application for amendment seeking possession is moved after period of four years. It is not even the case of the Petitioners that the possession was lost during the pendency of the suit. It is inconceivable that the Petitioners will not know prior to institution of the suit that the possession is not with the Petitioners and that it is with the proposed Defendants. Even if any lenient view is to be taken, for lack of any evidence of diligence on the part of the Petitioners, same cannot be extended. If the Petitioners are now permitted to amend and prolong the hearing of the suit, the learned Judge will not be able to invest judicial time in more meritorious cases of diligent litigants. Keeping in mind the legislative policy engrafted by way of an amendment specifying the stage at which the amendment should be moved, the equitable jurisdiction of this Court cannot be invoked in the present case. Writ Petition is accordingly rejected.

(N.M.Jamdar, J.)