

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

BENCH AT AURANGABAD.

WRIT PETITION NO.691 OF 2015

Ashruba S/o Rambhau Shingade
since deceased through L.Rs. ... Petitioners.

Versus

Parmeshwar S/o Ashruba Shingade
and others. ... Respondents.

...
Mr.K.R.Doke, advocate for the petitioners.
Mr.S.V.Natu, advocate for the Respondent No.1.

...

CORAM : S.V.GANGAPURWALA J.

Date : 12.12.2017.

PER COURT :

1. Mr.Doke, learned counsel for the petitioners/original defendants submits that the Respondents/plaintiffs have filed suit for partition and separate possession. Subsequently, amendment application is filed. Under the amendment application, the plaintiffs are seeking enhanced share in the suit properties. The

amendment application is filed on erroneous pleadings. The same could not have been entertained by the trial Court. The shares are also been wrongly claimed on death of Ashruba. They wrongly contend that these petitioners are illegitimate children of Ashruba.

2. Mr.Natu, learned counsel for the Respondent submits that on account of death of Ashruba, naturally, the shares of the plaintiffs would change and increase. The same is sought to be brought on record by way of amendment.

3. It is not disputed that the amendment application is filed prior to framing of issues and on account of death of Ashruba, thereby claiming enhanced share.

4. It is trite that at the time of entertaining the amendment application, the merits of the application are not required to be considered. The defendants will have every right to controvert the averments sought to be introduced by amendment by filing a Written

statement.

5. The amendment as sought is claimed on account of death of Ashruba during the pendency of the suit. The trial Court has properly exercised the discretion.

6. In view of that, no interference is called for. The Writ Petition is disposed of. No costs.

(S.V.GANGAPURWALA, J.)

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