

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

BENCH AT AURANGABAD.

WRIT PETITION NO.1537 OF 2015

Rocky S/o Chaganaappa
Khatade and another. ...Petitioners.

Versus

Mankabai W/o Chaganaappa
Khatade and others. ... Respondents.

...

Mr.M.K.Deshpande, advocate for the petitioners.
Mr.Nikhil S.Jaju, advocate holding for
Mr.L.B.Pallod, advocate for Respondent No.7.

...

CORAM : S.V.GANGAPURWALA, J.

Date : 15.12.2017.

PER COURT :

1. Though served, none appears for Respondent Nos.1 to 6. Mr.Jaju, learned counsel appears for Respondent No.7.

2. The application filed by the present plaintiffs for amendment is rejected.

3. According to Mr.Jaju, learned counsel, proper reasons are given by the learned Judge while rejecting the application. It is for the plaintiffs to prove whether they are sons of Chaganaappa. Whether the plaintiffs follow Hindu religion is not an issue before the Court. That aspect is rightly considered by the Court.

4. For a person to claim the rights under the provisions of Hindu Succession Act, he is required to be a Hindu. Reference can be had to Section 26 of the Hindu Succession Act. The trial has not yet commenced. It can not be said that the amendment sought to be made would be alien to the matter in controversy.

5. Even otherwise, the defendants will have every right to controvert the averments sought to be introduced by way of amendment by filing additional Written Statement.

6. In light of the above, the impugned order is quashed and set aside and the application Exh.45 seeking amendment is allowed.

7. The Writ Petition is accordingly disposed of. No costs.

(S . V . GANGAPURWALA, J .)

asp/office/wp1537.15

