

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

WRIT PETITION NO. 4581 OF 2016

Revubai Kallappa Manure & Ors. ...Petitioners

Vs.

Shivappa Ningappa Patil & Ors. ...Respondents

.....

Mr.Ashok B.Tajane for the Petitioners.
Mr.Ramdas H. Patil for Respondent Nos. 2 to 6.

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**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: APRIL 3, 2017**

P.C. :

1. Rule. Rule made returnable forthwith. By consent, the matter is heard finally at the stage of admission itself.

2. The petitioners who are original plaintiffs in Regular Civil Suit No. 464 of 2011 filed application below Exhibit 63 under Order VI Rule 17 of C.P.C. for amendment of plaint which was rejected on 2nd December 2015 by the learned 2nd Joint Civil Judge Junior Division, Solapur. The suit is for declaration, partition, separate possession and injunction. By order dated 1st August 2013, the suit was partly decreed. The Respondents i.e. original defendants had filed Civil Appeal No. 257 of 2014, which was

remanded and thereafter, the respondents had filed the written statement after a period of one year and three months and therefore, the plaintiffs had filed the application for amendment of plaint.

3. The learned counsel for the petitioners submits that before the filing of affidavit of evidence i.e. before commencement certificate of trial the petitioners had filed application for amendment on 4th November 2015 and therefore, the learned trial Judge ought to have allowed the application for amendment. He has further submits that the learned trial Court has rejected the application for amendment on the ground of delay especially when the written statement was filed after a period of one year and three months i.e. after the order of remand. The statement was filed on 10th August 2015 and the application for amendment was moved on 4th November 2015 and hence there is no delay. The application for amendment under Exhibit 63 filed by the plaintiffs is relevant as the plaintiffs had never relinquished the rights in the agriculture land and the mutation entry no. 547 is illegal. It is necessary for the plaintiffs to plead these facts in the suit as this suit is for partition and the application for amendment ought to have been allowed.

4. The learned counsel for the respondents/ original defendants while opposing this petition submits that after considering the plaint and the written statement by the learned Judge, the issues are framed in the present case and thereafter the application for amendment of plaint is moved. He further submits that he supports the order passed by the learned Judge.

5. Perused the plaint, proposed amendment mentioned in Exhibit 63 and the order dated 2nd December 2015 passed by the learned 2nd Joint Civil Judge Junior Division, Solapur. The plaintiffs have prayed for partition, separate possession as well as injunction. The Plaintiffs have also pleaded in para 4 of the plaint that the defendants have illegally tried to deprive the plaintiffs of their share in the ancestral property. It appears from the written statement that the defendants have taken specific defence that the plaintiffs had relinquished their rights in the property, pursuant to which mutation entry no. 547 was made. The plaintiffs, after coming across their defences, now wants to deny this defence by way of the amendment to the plaint, however, it is not necessary, as it is a matter of evidence. The denial of the plaintiff can be taken on record at the time of filing affidavit of examination in chief. The

plaintiffs can also advance their explanation to that effect. The plaintiffs have to lead evidence to prove their case so also burden is on the defendants to prove their case. Therefore, it is not necessary for the plaintiffs to plead these facts by way of denial and thereby making an amendment to the plaint. There is no need to disturb the order passed by the learned Judge. The Writ Petition is disposed of. Rule is discharged.

(MRIDULA BHATKAR, J.)