

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO.12610 OF 2016**

Shri Abhay Prakash Sawant & anr. ... Petitioners  
Vs.  
Shri Vilas G. Sawant & Ors. ... Respondents

Mr.M.M. Sathaye for Petitioners  
Mr.R.N. Gite for Respondent No.1

**CORAM: Mrs.MRIDULA BHATKAR, J.  
DATED: APRIL 19, 2017**

**P.C. :**

1. Rule. By consent of the parties, Rule made returnable forthwith and heard finally.
2. In this petition, the order dated 14.6.2016 passed by the learned Civil Judge, Senior Division, Malegaon thereby rejecting partially the application for amendment of the plaint, is challenged.
3. The petitioners, who are the original plaintiffs, filed Special Civil Suit No.1 of 2016 for declaration, partition and possession of the suit property and the respondents are the cousins. The petitioners claim that the suit property is an ancestral property and, therefore, they have right and interest in the property to the extent of their share. The respondents, i.e., the defendants, have filed written statement in the suit and thereafter, the application for

amendment in the plaint under Order 6 Rule 17 of the Civil Procedure Code. The learned trial Judge has allowed some amendment which is mentioned in the amendment application, however, rejected the amendment which is incorporated in para 5 of the amendment application, i.e., exhibit 52. Hence, this Writ Petition.

4. The learned Counsel for the Petitioners has submitted that this application was moved immediately after the filing of the written statement by the respondents. The issues are also not yet settled. He further submitted that the plaintiffs are not seeking any change in the prayers and hence, there is no change in the nature of the suit if this amendment in para 5 of the application is allowed. He submitted to that extent, the order of the learned trial Judge is to be modified.

5. The learned Counsel for the Respondents while opposing the petition submitted that the amendment is sought to wipe out his defence which he has raised in the written statement. He further submitted that the reasoning given by the learned trial Judge while rejecting this amendment that the facts stated therein were well within the knowledge of the plaintiffs at the time of filing of the suit

is correct and hence, the petition is to be dismissed.

6. Perused the impugned order, the plaint and the amendment application and the reply given to it. It is true that the facts which are pleaded in para 5 of the amendment application were within the knowledge of the plaintiffs when they filed the suit. However, it appears that these facts were not mentioned in the plaint and the said para and on that aspect, the plaint is cryptic and therefore, these details by way of addition to para 6 can be allowed as it does not change the nature of the suit. The prayers in the plaint remain the same. There is no addition or any amendment to the prayers made by the plaintiff and hence, I allow this petition thus:

- i) Rule made absolute partly in terms of the amendment mentioned in para 5 of the amendment application below exhibit 52.
- ii) Amendments to be carried out within two weeks.
- iii) The respondents are permitted file additional written statement to that extent by 15.6.2017.

7. Writ Petition is disposed of accordingly.

**(MRIDULA BHATKAR, J.)**