

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

WRIT PETITION NO.9319 OF 2014

shri. Abdul Rehman Ibrahim Fatakare Petitioners
(since deceased) thru' his heirs and LRs
Mariambi Fatakare & Ors.

Vs.

Shri. Hasan Fatakare & Ors. Respondents

Mr. Nikhil Mallelwar i/by Mr. Sachin R. Pawar for the Petitioners.
Mr. Vilas B. Tapkir for Respondent no.2.

Ms. Jai V. Kanade i/by Ms. Shivaji S. Samel for Respondent Nos.
1(A), 1(D), 1(E) and 1(B).

Coram : Smt. Sadhana S. Jadhav, J.

Date : 14th November, 2017

P.C.:

1 Heard respective Counsel. Rule. Rule made returnable
forthwith with the consent of the parties.

2 The present petitioner happens to be the original plaintiff
in Regular Civil Suit No. 3 of 2011 seeking partition and separate

possession. The suit was instituted on 11th January, 2011. The defendant had filed their written say on 10th March, 2011. On 13th January 2012, issues were framed. The affidavit-in-evidence was filed on 24th October, 2013. The plaintiff had filed an application seeking amendment to the plaint on 9th January 2014 alongwith the proposed amendment.

3 The learned Civil Judge Junior Division by an order dated 18th September 2014 was pleased to reject the application. It was the contention of the plaintiff that since the defendants had taken a particular stand in their written statement in order to defend themselves, the proposed amendment was sought rather to explain the contentions raised in the written statement. The learned trial Court has considered the dates and has observed that the application seeking proposed amendment was filed after filing of affidavit of evidence at belated stage and the proposed amendment would change the very nature of the plaint as there would not only be additional stand taken by the plaintiff but inconsistent stand and

therefore, the application has been rejected. The finding recorded by the learned Court and the reasons assigned for rejecting the application cannot be interfered with. They do not call for any interference by this Court as they are based on a sound reasoning. It is pertinent to note that by the proposed amendments, the plaintiff was seeking amendment to pleadings after filing affidavit of evidence. The said contentions were not raised in the plaint. Hence, Rule is discharged. The petition stands dismissed.

4 Needless to say that the interim relief granted by the order dated 13th October, 2014 stands vacated. The suit is of the year 2011. Hence the trial Court is hereby requested to make an endeavour to expedite the suit as far as possible.

(Smt. Sadhana S. Jadhav, J.)