

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

WRIT PETITION NO. 2182 OF 2018

Narendra Tanaji Patil & Ors.	...	Petitioners
V/s.		
Pratap Tukaram Patil & Ors.	...	Respondents

- Mr.Tejpal S. Ingale a/w. Mr.Nikhil Pawar for the Petitioners.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 15th MARCH, 2018.

P.C. :

- 1] Heard learned counsel for the Petitioners.
- 2] By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioners are challenging the order dated 28th November 2017 passed by Jt. Civil Judge Junior Division, Islampur, below application at Exhibit-142 in Regular Civil Suit No.228 of 2010.
- 3] The application at Exhibit-142 was filed by the present Petitioners, who are the Plaintiffs before the trial Court for amendment of the plaint in order to add the description of the suit property as per the Grampanchayat Record.

4] However, as rightly held by the trial Court, the amendment application is filed at a very belated stage, when the matter is fixed for final argument before the trial Court and as can be seen from the observations made by the trial Court in paragraph No.5, not only the evidence of both the sides is over but even the final argument on behalf of the Respondent/Defendant is also over. Now, the suit is pending for final argument of the Petitioners and judgment only.

5] It is pertinent to note that the suit was filed in the year 2010 and at the fag end of the trial when the matter is for final argument, if the Petitioners are claiming such amendment in the plaint, then they should have given sufficient explanation as to why they could not apply for such amendment at any earlier stage. As rightly observed by the trial Court, in such situation, the embargo laid down by the Proviso to Order 6 Rule 17 of C.P.C. comes into play. The said Proviso clearly mandates that the Petitioners have to prove that they have exercised due diligence, but despite that, they could not bring these facts to the notice of the Court earlier. There is no such averment in the application about due diligence exercise of the Petitioners. If the suit was pending since the year 2010 and when the matter is fixed for argument and judgment in the year 2017, the Petitioners are filing such application for amendment, then no

inference of exercise of due diligence can be drawn.

6] Moreover, as held by the trial Court, by the proposed amendment the Petitioners want only to give additional details, so they do not come with the case that the description of the suit property as given in the plaint is not correct. Hence, no prejudice is likely to cause to the Petitioners, even if the amendment is not allowed.

7] The Writ Petition is therefore without merits and hence, stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]