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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4129 OF 2016

Jalinder Krishna Yadav & Anr.

..Petitioners.

V/s.

Rangrao Appaso Yadav & Ors.

..Respondents.

Mr.Uday P.Warunjikar with Mr.Siddhesh Pilankar for the petitioners.

Mr.M.S.Deshmukh for respondent Nos.1 to 3.

CORAM: NITIN W.SAMBRE, J.

DATE : JULY 27, 2018

P.C.:-

Heard learned counsel for the parties.

2. In a suit being Regular Civil Suit No.80/1989 for perpetual injunction with an alternative prayer for partition, an application Exhibit-85 moved under Order 6 Rule 17 of the Code of Civil Procedure for amendment, the learned trial Court passed the impugned order by partly allowing the same. As such, this petition by the petitioners / original defendants.

3. The learned counsel for the petitioners / original defendants would urge that the suit itself is not maintainable as the defendants are in possession of the suit property and there is no prayer for possession of the suit property in the plaint. Apart from above, according to him, the valuation of the suit is not properly carried out and the relief sought by way of amendment would change the nature of the suit. According to him, trial in the suit has commenced and the defendant has also entered into the witness box and hence submits that the order is not sustainable and prays to allow the petition.

4. The learned counsel for the respondent / original plaintiffs would support the order and urge that discretion is properly exercised by the trial Court.

5. What is required to be appreciated from the submissions of the respective parties is, when a suit for partition is to be decided by the trial Court, the trial Court is required to be sensitive to the fact that the plaintiffs and defendants are co-sharers and as such, have equal interest in the property. If the suit is not properly valued or the plaintiffs fail to demonstrate their

possession over the suit property, consequences will follow. However, it will be premature to comment anything on such issues as evidence in the suit is being recorded.

6. Looking to the nature of controversy, in my opinion, discretion exercised by the learned trial Court does not warrant any interference. As such the petition fails and is dismissed.

7. In the circumstances in which the application for amendment is allowed, it would be appropriate to direct the respondents / plaintiffs to pay costs of Rs.2,000/- to be deposited before the trial Court within six weeks from today to which the respondents will be entitled to withdraw.

(NITIN W.SAMBRE, J.)