

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

WRIT PETITION NO. 4288 OF 2016

Babasaheb Subrao Wavare & Ors. ... Petitioners
V/s.
Smt.Akkatai Ramchandra Wavare & Ors. ... Respondents

- Ms.Tejashree Joshi i/b. Mr.Jitendra H. Oak for the Petitioners.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 11th APRIL, 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 24th November 2015 passed by the Civil Judge, Junior Division, Palus, below the application at Exhibit-209 in Regular Civil Suit No.531 of 2008.

3] The application at Exhibit-209 was filed by the present Petitioners, who are the original Plaintiffs before the trial Court under Order-6 Rule-17 of the Code of Civil Procedure, 1908, for amendment of the plaint in order to bring on record further particulars. The trial

Court has rejected the said application and hence, the instant Writ Petition.

4] Admittedly, the trial has commenced and now the matter is before the trial Court for cross-examination of the Petitioners-Plaintiffs. Hence, as per the Proviso laid down under Order-6 Rule-17 of C.P.C., once the trial has commenced, unless the Court comes to the conclusion that despite due diligence, the party could not have brought these facts to the notice of the Court at an earlier stage, such amendment application cannot be allowed.

5] Here, in the case, no explanation is offered as to what due diligence if any is exercised by the Petitioners. The entire application is silent about this material aspect. It is not the case that, these facts have occurred subsequent to filing of the suit. All these facts are prior to the filing of the suit. According to the Petitioners, these incidents have occurred in the year 1983-1984, when the work of the well was done. However, there is nothing on record to show why these facts were not pleaded earlier. The impugned order passed by the trial Court goes to show that the affidavit of evidence was filed on 17th February 2012 and since then, the matter is for cross-examination. In such situation, the trial Court has rightly rejected this application; especially in the light of the contention raised by the Respondents/

Defendants stating that their right to take an alternative plea as a defence is going to be affected on count of this amendment. The impugned order therefore passed by the trial Court being just, legal and correct; no interference is warranted in the said order.

6] The Writ Petition being devoid of merit, stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]