

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

WRIT PETITION NO. 3240 OF 2016

Jayesh Himatlal Khandar & Anr. V/s. Nimish Chandubhai Patel & Ors.	...	Petitioners Respondents
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- Mr.Firoz Bharucha a/w. Mr.Nishant Thakkar & Mr.Rajesh Poojary i/b. Mulla & Mulla & Craigie Blunt & Caroe for the Petitioners.
- Mr.Vishal Kanade a/w. Mr.Ramchandra Narayan, Mr.Tejjas P. Shah i/b. Narayanan & Narayanan for Respondent Nos.7, 8 and 10 to 13.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 21st FEBRUARY, 2018.

P.C. :

- 1] Heard learned counsels for both the parties.
- 2] By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioners are challenging the order dated 14th October, 2014 passed by the City Civil Court, Mumbai in Chamber Summons No.480 of 2014 in Suit No.6397 of 2003.
- 3] The said Chamber Summons was tendered by the present Petitioners who are the Plaintiffs in the trial Court, for carrying out

the amendment in the plaint. The amendment sought was firstly, to bring on record the legal heirs of Defendant Nos.3 and 4. Though, the said amendment was not allowed, in the course of hearing of the Writ Petition, the said amendment is not pressed, as the legal heirs of Defendant Nos.3 and 4 had already filed a separate suit.

4] The second amendment was sought to bring on record the legal heirs of Defendant No.5, who has executed a registered deed of assignment dated 15th June 2010 whereby he has conveyed all his rights, title and interest to the suit property in favour of Defendant No.1. The impugned order passed by the trial Court especially observations in paragraph 11 onwards go to show that the trial Court has allowed the said amendment also. However, in the operative order, it is not mentioned. Learned counsel for the Respondents fairly concedes that he has no objection, if the operative order is corrected accordingly and therefore, that amendment needs to be considered as allowed and there should not be any dispute on that aspect also.

5] The grievance of the Petitioners is in respect of the rejection of the amendment sought in paragraph 5 onwards of the schedule of amendment. The trial Court has rejected the said amendment on the ground that it was sought at the belated stage. However, admittedly, the trial of the suit has not commenced. Learned

counsel for the Respondents also fairly concedes that keeping open all the contentions raised by the parties to be decided at the time of final hearing, he has no objection to allow the said amendment.

6] Accordingly, the Writ Petition is allowed. The impugned order passed by the trial Court rejecting the amendment as sought in paragraph 5 onwards of the proposed schedule of the amendment is allowed. Similarly, the operative order is also corrected so as to allow the amendment to bring on record paragraph 4 of the schedule of the amendment.

7] Writ Petition is disposed of in above terms.

[DR.SHALINI PHANSALKAR-JOSHI, J.]