

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****WRIT PETITION NO. 2974 OF 2015****ALONGWITH****CIVIL APPLICATION NO. 790 OF 2015****Shashikant Gopal Pawshe & Ors.****..... Petitioners****VERSUS****Janardan Hiru Pawshe & Ors.****..... Respondents**

Mr.Ganesh Koli for the Petitioners.

Mr.S.M.Sabrad for the Respondent nos. 2, 3(1) to 3(5) and 6.

Mr.Sanjay Pawashe on behalf of the Respondent no.1 present in court.

CORAM : R.D. DHANUKA, J.**DATE : 17th SEPTEMBER, 2018****P.C.**

Learned counsel appearing for the petitioners states that the affidavit of service is already filed to show that all the respondents are served.

2. Mr.Sabrad, learned counsel for the respondent nos. 2, 3(1) to 3(5) and 6 and other respondents are also served.

3. By this writ petition filed under Article 227 of the Constitution of India, the petitioners have impugned the order passed by the learned trial judge refusing to allow the application for amendment of the plaint by which the applicants sought to include two of the properties which were pointed out by the defendants during the course of the

argument of Ex.5 application contending that those properties were not included by the petitioners in the suit filed by him for partition. The petitioners accordingly filed an application *inter alia* praying for amendment and to include those properties. The learned trial judge however has erroneously rejected the said application for carrying out the amendment.

4. In my view, the amendment to the plaint was necessary and thus could not have been rejected by the learned trial judge. I, therefore, pass the following order :-

(a) Impugned order dated 4th February, 2015 below Ex.81 is quashed and set aside.

(b) Application (Ex.81) filed by the petitioners is allowed in toto.

(c) Amendment to be carried out within two weeks from today. Amended copy of the plaint shall be served upon all the defendants through their respective advocates after two weeks from the date of carrying out amendment.

(d) It is made cleat that the defendants would be at liberty to file additional written statement to the amended copy of the plaint within four weeks from the date of service of the amended copy of the plaint. It is made

clear that no further extension of time would be granted to the defendants to file additional written statement. Copy of the written statement shall be served upon the petitioners' advocate simultaneously.

5. Writ petition is disposed of in the aforesaid terms. No order as to costs.

6. In view of the disposal of the writ petition, civil application does not survive and is accordingly disposed of.

[R.D. DHANUKA, J.]