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

WRIT PETITION NO. 11140 OF 2017

Shalan Dalvi and ors	...	Petitioners
V/s.		
Vaakoba Subrao Patil and ors	...	Respondents

Mr. Tejas Hilage, for the Petitioners

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 18th JANUARY, 2018.

P.C. :

- 1] Heard learned counsel for the petitioners.
- 2] By this petition filed under Article 227 of the Constitution of India, petitioners are challenging the order dated 27th March 2017, passed by Civil Judge Junior Division, Chandgad below exh.136 in R.C.S.No.45/2008.
- 3] The said application was filed by the petitioners under Order VI Rule 17 of the Code of Civil Procedure, for amendment of the plaint. However, as it was found that the amendment was sought at the belated stage and after trial is commenced, the trial Court has rejected the said application.
- 4] According to learned counsel for the petitioners, however,

the proposed amendment does not change the nature of the suit and it is essential for deciding the dispute between the parties. Hence even if it was sought at belated stage, it should have been allowed by the trial Court. It is further submitted that though the agreement is dated 10.3.2011, it was lost and immediately after the petitioners found it, they sought to produce it by filing application at Exh.121 and thereafter they have filed this application for amendment in the plaint in respect of said agreement dated 10.3.2011 which is alleged to be executed by respondent No.1, in his capacity as Karta of the joint family and thereby confirmed the petitioners' possession as owner of the suit property.

5] However, perusal of the impugned order passed by the trial Court reveals that the petitioners have filed present suit for partition and separate possession of the suit property against respondents. The said suit is pending since 2008. All of a sudden in the year 2016, that is on 26.9.2016, the petitioners filed application for production of certain documents including this agreement of sale dated 10.3.2011, stating that it was lost and therefore, it was produced at the time of filing affidavit-in-lieu of Examination-in-chief; the petitioners have thereafter taken search and they found it. This application at Exh.121 was strongly resisted by respondents. The trial Court allowed its production though sought at belated stage, on

the ground that the respondents will have an opportunity to rebut the evidence of plaintiffs by leading cogent evidence. Then considering that it was a private document, which is required to be proved, it was not exhibited or admitted in evidence. This order was passed by the trial Court on 10.10.2016.

6] Thereafter on 16.2.2017, that is after about four months, petitioners have filed the present application for amendment in the plaint. It is pertinent to note that the petition is conspicuously silent as to why the petitioners could not bring this fact to the notice of Court at an earlier stage. Even as regards the contention that they had lost original document, no particulars are given as to when they found it. It is also necessary to consider that even after production of said document was allowed by the trial Court on 10.10.2016, the petitioners were not diligent in making the application for amendment of the plaint immediately. They filed this application four months thereafter. By that time cross examination of plaintiff was also conducted.

7] Thus, there is total absence of exercise of due diligence on the part of the petitioners. The Proviso to Order VI Rule 17 mandates that no Court shall allow amendment in the plaint once trial is commenced unless the Court comes to the conclusion that despite exercise of due diligence, party could not have brought these facts to

the notice of Court at an earlier stage. As held by the Apex Court in the case of *Vidyabai & Ors. Vs. Padmalatha & Anr. [(2009) 2 SCC 409]*, the Proviso to Order-VI Rule-17 clearly mandates that unless the embargo laid down therein is crossed by showing exercise of due diligence, the amendment in the pleading cannot be allowed.

8] Here in the case, petitioners have failed to cross that embargo. Therefore, the trial Court has rightly rejected their application. In writ jurisdiction, therefore, no interference is warranted therein. Writ Petition stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]