

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

WRIT PETITION NO. 13573 OF 2017

Shri. Sandeep Bhausahab Chavan & Ors. ...Petitioners

Versus

Shri. Raghunath Arjunrao Chavan & Ors. ...Respondents

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Mr.Drupad S. Patil for the Petitioners.

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**CORAM: MRS.MRIDULA BHATKAR, J.
DATED: JULY 06, 2018**

P.C. :

1. Upon urgent mentioning, taken on Production Board.
2. This Petition is directed against the order dated 18th September, 2017 passed by the learned 5th Jt. Civil Judge, Junior Division, Pune thereby rejecting the application below exhibit 34 filed by the plaintiffs under Order 6 Rule 17 of the Code of Civil Procedure, 1908 in Regular Civil Suit No. 730 of 2014. The petitioners are the original plaintiffs.
3. The plaintiffs have filed a suit for possession and mandatory injunction against the respondents/ defendants. It is the case of

the plaintiffs that under misrepresentation, the signatures of the plaintiffs were obtained on a Development Agreement and that document first come into light when written statement was filed.

4. The learned Counsel for the petitioners submits that the petitioners have pleaded a case of fraud played by the defendants on a Revenue Authority. He further submits that the said document was first introduced in the written statement and, therefore, it is necessary for the plaintiffs to amend their plaint. He further submits that in the impugned order, the learned Judge of the trial Court has not stated that it is going to change the frame of the suit. He further submits that amendment is necessary, as the plaintiffs have put their case in respect of the document which reference has come first time on record.

5. Heard submission. Perused impugned order. Also perused the paragraphs pointed out by the learned Counsel for the petitioners so also the proposed amendment and written statement. At the relevant time, important documents were relied and pointed out by the defendants to the plaintiffs. However, the plaintiffs have not filed an application for amendment for two years, but the application was moved on 7th August, 2016. As the

execution of the documents was within the knowledge of the plaintiffs and the said document was relied by the defendants, it cannot be said that the said document was newly introduced by the defendants in the suit. Moreover, the plaintiffs can lead evidence in respect of the defence taken by the defendants in their written statement by way of rebuttal. The plaintiffs have right to cross-examine and demolish the execution of the document in the cross of the defendants. No interference is required in the order dated 18th September, 2017 passed by the learned 5th Jt. Civil Judge, Junior Division, Pune.

6. In view of the above, Writ Petition is dismissed in *limine*.

(MRIDULA BHATKAR, J.)