

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13966 OF 2017

Lilavati Waman Pisal & Ors.	 Petitioners
V/s.	
Tanaji Babu Pawar & Ors.	 Respondents

Mr. Rahul S. Kadam for the Petitioners.

None for the Respondents.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 14TH MARCH 2018.

P.C. :

1. Heard Mr. Kadam, 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 7th November 2017 passed by the Joint Civil Judge, Senior Division, Baramati, below the application "Exhibit-75" in Regular Civil Suit No.100 of 2013.
3. The application at "Exhibit-75" was filed by the present Petitioners, who are Defendant Nos.5 to 7 before the Trial Court, for amendment of their written statement. It was contended that, the Respondents have filed the Suit for declaration that, they are the legal heirs of deceased Tukaram Bala Pawar and, therefore, they are entitled to have share in the suit property along with the present Petitioners and also for permanent injunction restraining Original Defendant Nos.1, 2 and 3 from making partition of the suit property, excluding them.

4. According to the Petitioners, by filing written statement at 'Exhibit-44', they have resisted the Suit and also raised various contentions. Now, by proposed amendment, they want to elaborate those contentions and, therefore, according to learned counsel for the Petitioners, the Trial Court should have allowed the said amendment.

5. It is further submitted that, by the proposed amendment, the Petitioners also wanted to show how the Suit is barred by limitation, but, the Trial Court has not allowed the said amendment also. It is contended that, the suit land was given on the new condition for cultivation to the Petitioners' father on 4th March 1935 and mutation entry to that effect was also made. Petitioners had, out of the said land, sold 10 acres of land to Walchandnagar Industries in the year 1945 itself. In respect of the said 'Sale-Deed' also, neither the Plaintiffs nor the other Defendants had taken any objection. It is urged that, all these facts the Petitioners wanted to add in their written statement to show that the Suit is barred by limitation, as at no time earlier, the Plaintiffs had raised or challenged the rights of the present Petitioners in the suit property. Hence, the Trial Court should have allowed such amendment.

6. However, as can be seen from the impugned order passed by the Trial Court, the application for amendment was filed after the trial has commenced and the affidavit-in-evidence of the Plaintiff was filed and, therefore, the embargo laid down under the Proviso to Order 6 Rule 17 of the Code of Civil Procedure, 1908, comes into play. In order to cross that

embargo, the Petitioners should have shown or, at-least, averred in the application as to how, despite due diligence, they could not bring these facts to the notice of the Court at any earlier stage. However, the entire application for amendment is conspicuously silent about the exercise of due diligence. Whatever facts, which Petitioners now want to bring on record by way of amendment, were well within the knowledge of the Petitioners, even before they filed the written statement, and in such situation, the Trial Court has rightly held that, as the proposed amendment is sought without explaining as to why the amendment was not brought earlier and without making any averment of due diligence, such application for amendment, filed after the trial has commenced, cannot be entertained, in view of the jurisdictional bar placed on the Court, as held by the Apex Court in the case of *Vidyabai and Ors. Vs. Padmalatha and Anr.*, (2009) 2 SCC 409.

7. The impugned order passed by the Trial Court, therefore, does not call for any interference. Otherwise also, the plea of limitation being a legal plea, the Petitioners can argue about the same, and under Section 3 of the Limitation Act, the Court has to consider the said plea on its own accord also. Therefore, no such prejudice is likely to be caused to the Petitioners.

8. In view of the above, the Writ Petition stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]