

DDR

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

**WRIT PETITION NO. 13434 OF 2018**

Ganesh Vishnu Tawar & ors. ..Petitioners  
vs.  
Anandrao Jagaru Jamale & ors. ..Respondents  
....  
Shri Kalpesh Patil for petitioners.  
Shri Dilip Bodake for respondent Nos. 1 to 7.

....  
**CORAM : M.S.KARNIK, J.**

**DATE : 30<sup>th</sup> AUGUST, 2019**

**P.C. :**

Heard learned counsel for the petitioners.

2. The petitioners are the original defendants. The respondents – original plaintiffs filed the suit for specific performance of an agreement of sale executed on 25<sup>th</sup> April, 2001. The defendants filed the written statement on 17<sup>th</sup> June, 2013. The issues are framed. The plaintiffs filed their affidavit of examination-in chief. At this stage the defendants filed application below Exhibit 106 for amending the written statement. By the proposed amendment which is at page 30 of

the paper-book, the defendants wanted to bring on record that there was dispute amongst the defendants over the partition of the suit property. He also wanted to bring on record the averments regarding non joinder of necessary parties. Further they wanted to take a plea that there is Karad-Chiplun road passing through the suit property of which the specific performance is sought and therefore the suit is not maintainable.

3. The trial Court rejected the application by the impugned order observing that the proposed amendment is not necessary to decide real controversy between the parties. The amendment is also rejected on the ground that the defendants failed to prove that they could not raise the plea before the commencement of the trial. In my opinion, the order of the trial Court calls for interference. No doubt, the application for amendment is made after the issues are framed. However, by the amendment the petitioners wanted to raise additional plea. The effect of the amendment is not to take away any admission in favour of plaintiffs. In my opinion, therefore the amendment

could have been allowed by imposing costs. Hence the following order :

**ORDER**

- i) The Petition is allowed.
- ii) The order passed by the trial Court is set aside. The application Exhibit 106 is allowed subject to payment of cost of Rs.5,000/- payable to the Chief Minister's Relief Fund.
- iii) The amendment to be carried out within a period of 2 weeks from today.
- iv) Needless to mention that the plaintiffs will be at a liberty to file fresh/additional affidavit of examination-in-chief in view of this order or as the trial Court may permit.

4. With these observations, the Petition is disposed of.

**(M.S.KARNIK, J.)**