

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

WRIT PETITION NO. 3359 OF 2019

Shri Balkrishna Harishchandra Pimple
& Anr.

... Petitioners.

V/s.

Shri Pramod Harishchandra Pimple
& Ors.

... Respondents.

Ms. Neeta Karnik, Advocate for the Petitioners.

Mr. N. V. Gangal, Advocate a/w. Namita M. Mesting and
Prerna Shukla for Respondent No.1.

CORAM : M. S. KARNIK, J.

DATE : SEPTEMBER 23, 2019.

PC :

1 Heard the learned counsel for the Petitioners and the Respondent No.1. The Trial Court rejected the application for amendment of plaint filed by the Plaintiffs.

2 The Petitioners are the original plaintiffs in the RC Suit. The suit is filed by the plaintiffs for partition and for claiming 1/6th share in the suit property. However, by filing application being Exh. 153 in RC Suit, the plaintiffs prayed for amendment in the plaint and thereby claimed 1/3rd share in the suit property. The plaintiffs wanted to bring on record that during lifetime and

existence / subsistence of the marriage of plaintiff's mother Anandibai with Harishchandra, their father Harishchandra married Hirubai. Defendants are children of Harishchandra and Hirubai. Therefore, it is now claimed by the proposed amendment that defendants are illegitimate children of Hirubai. By the amendment, this fact was sought to be brought on record thereby claiming that the plaintiffs have 1/3rd share in the suit property.

3 It is material to note that the suit was dismissed on 10.12.2014. Thereafter, in the appeal preferred before the District Court, the Appellate Court remanded the matter to the trial court, permitting the plaintiff to add the necessary parties and proceed with the suit. In the order of the Appellate Court it is mentioned that the evidence is already recorded.

4 Learned counsel for Petitioners pointed out that upon remand, the evidence is being recorded by the trial court. Considering that the suit is of the year 2011 and that the evidence is being recorded, I do not find this is to be a fit case to interfere with the order passed by the trial court, rejecting the application of the plaintiffs for amendment. It is however made it clear that in the event of an adverse decree passed, the plaintiffs are at

liberty to challenge the order impugned herein in the appeal that may be preferred.

5 With these observations, the petition is rejected.

(M. S. KARNIK, J.)

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