

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.5789 OF 2020

- 1] Dnyandeo Namdeo Shinde
Age 55 years, Occ-Agriculture
R/o Khadka, Taluka Newasa,
District Ahmednagar.
- 2] Trimurti Pavan Pratisthan, Khadaka
Taluka Newasa, District Ahmednagar
Through its Secretary
Manish Annasaheb Ghadge Patil
Age 46 years, Occ : Service,
R/o Trimurti Shaikshanik Sankul,
Trimurti Nagar, Newasa Phata
Taluka - Newasa, District - Ahmednagar. .. PETITIONERS
[Orig.Defendant.Nos.3 & 4]

VERSUS

- 1] Nivruti Govind Kolekar
Since deceased through L.Rs.
- 1-A] Sau.Sumanbai Suryabhan Devkate
Age : 62 years, Occu.Household and
Agriculture, R/o : Khadka, Taluka Newasa
District Ahmednagar.
- 1-B] Sau.Kamlabai Sampat Mahanor
Age : 57 years, Occu.Household and
Agriculture, R/o Khadka, Taluka Newasa
District Ahmednagar.
- 1-C] Sau.Latabai Rajendra Thorat
Age 46 years, Occu.Household and
Agriculture, R/o Dhule, Tal.& Dist.Dhule

2] Kishor Nivrutti Kolekar,
Age 47 years, Occ: Agri,
R/o Khadka, Taluka Newasa,
District Ahmednagar.

3] Suresh Nivrutti Kolekar
Age 57 years, Occ-Agri,
R/o Khadka, Taluka Newasa,
District Ahmednagar.

..RESPONDENTS

[Respondent no.1 Orig.Plaintiff,
Respondent nos.2 & 3 are original
defendant nos.1 & 2]

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Adv.Mr.Anand P Bhandari for petitioners.

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CORAM : MANGESH S. PATIL, J.

DATE : 09/10/2020

ORAL ORDER :-

Heard.

2] The petitioners by way of this Petition under Articles 226 and 227 of the Constitution of India are impugning the order passed by the learned Joint Civil Judge, Senior Division, Newasa, District Ahmednagar in Regular Civil Suit No.330/2006 on the application of the respondent-plaintiff allowing him to carry out amendment in the plaint. The petitioners are the defendant nos.3 and 4 in the suit.

3] The learned advocate for the petitioners Mr.Bhandari vehemently submits that the application for amendment of the plaint was filed belatedly. The evidence of the respondent no.1 was already over. Affidavits in lieu of examination in chief of the petitioners' witnesses were also filed. At that

stage, the application seeking amendment was filed. The learned Judge ought to have taken into consideration this aspect which he has overlooked. There was no due diligence. Though the document now sought to be challenged by way of amendment is dated 15/9/2016, the application was filed on 16/8/2017. Production of such document and amendment to the pleadings is likely to protract the litigation. It is a suit for partition filed by the father. The petitioners have purchased the property from the defendant's son. By executing the relinquishment deed, sought to be challenged, the original plaintiff who is since dead relinquished his right in the suit properties. He therefore submits that the impugned order being perverse, arbitrary and capricious, the petitioners are filing this Petition.

4] Having heard the learned Advocate Mr.Bhandari and after perusal of the papers, in my considered view, this is not a matter where this Court can legitimately intervene in the proceeding before the trial Court.

5] It is a matter of record that the suit was filed way back in the year 2006 and still it is lingering in the trial Court itself. It is also a matter of record that the respondent no.1 plaintiff had closed his evidence and even the defence began with the process of leading their evidence. As can be seen from the proposed amendment sought to be incorporated in the plaint, it is now being averred that a false and bogus relinquishment deed has been brought into existence on 15/9/2016 i.e. during pendency of the suit. Even the trial Court had allowed the defence to take an appropriate defence touching this document in their testimony. It is then that the respondent plaintiff claims to have become aware and sought to add the pleading challenging that deed. If such is the state of affairs, the application for amendment having been filed

barely within 10 months of the date on which this document was brought into existence cannot be said to be challenged belatedly. When the issue of its being genuine or otherwise has a direct bearing on the matter in controversy, I find no apparent perversity, arbitrariness or illegality in the impugned order allowing the amendment to be carried out challenging its genuineness.

6] The Writ Petition does not deserve to be entertained and is dismissed in *limine*.

[MANGESH S. PATIL, J.]

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