

Anand

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

WRIT PETITION NO. 5340 OF 2019

Anil Kisan Khomane & ors. .Petitioners

Vs.

Tainur Sabbir Shaikh .Respondent

Mr. B. S. Shinde, Advocate, for the Petitioners
Mr. A. P. Kulkarni, Advocate, for the Respondent

CORAM : REVATI MOHITE DERE, J.

DATE : 25.02.2018

P. C.

. Heard learned counsel for the parties.

2. By this Petition, the Petitioners have impugned the order dated 01.12.2018 passed by the learned Jt. C. J. J. D., Baramati, Pune below Exh. 43 in R. C. S. No. 329 of 2013, by which the learned Judge was pleased to reject the Petitioners' Application seeking permission to carry out amendment in the Written Statement.

3. Learned counsel for the Petitioners submitted that the amendment is necessary to bring on record the Sale Deed, which the Petitioners received belatedly. He submitted that the Application filed by the Petitioners although does not contain any details as to why the alleged Sale Deed was not produced earlier, the Petitioners cannot be

faulted for the same, inasmuch as, the same was drafted by an Advocate.

4. Learned counsel for the Respondent opposes the Petition. He submitted that no interference was warranted in the impugned order. He further submitted that the Application filed by the Petitioners under O. VI, Rule 17 of the Code of Civil Procedure (for short 'C. P. C.') seeking amendment of the Written Statement, does not contain any details as to why the alleged Sale Deed was not produced earlier by the Petitioners. He further submitted that the said Application was filed at a time, when the Defendants' evidence was in progress. He also submits that there is no averment in the Application (Exh. 43) that despite due diligence, the said document could not be produced. He further submitted that the Petitioners had filed a suit claiming ownership, based on adverse possession, whereas by the proposed amendment, the Petitioners wanted to introduce a contrary plea i. e. of ownership based on a Sale Deed.

5. Perused the papers including the impugned order. The Petitioners are the Original Plaintiffs, who have filed a suit seeking possession of the suit property on the plea of adverse possession as against the Respondent. It appears that even earlier, the Petitioners had filed a suit in the year 2006, being R. C. S. No. 119 of 2006, where a similar plea of adverse possession over the suit property was raised by

the Petitioners. Admittedly, the claim of the Petitioners was dismissed by the Lower Court, and the said Judgment and Decree passed in the said R. C. S. No. 119 of 2006 has attained finality, inasmuch as, the said Judgment and Decree has neither being set aside nor modified / reversed by the Appellate Court. As noted earlier, the Petitioners filed their Plaint / Suit and raised the plea of adverse possession as against the Respondent's claim on the suit property based on title. After the Petitioners' evidence was over and the Respondent's evidence commenced, it is at that point of time, that the Petitioners filed an Application (Exh. 43) under O. VI, Rule 17 of the C. P. C. and sought permission to carry out amendment in the Written Statement. In the said Application, the Petitioners claimed that vide Sale Deed dated 30.08.1968, the Petitioner No. 1's father – Kisan Bala Khomane had purchased the suit property. By the proposed amendment, the Petitioners claimed ownership on the basis of the Sale Deed, a plea contrary to what was raised by the Petitioners in the suit i. e. plea of adverse possession. The trial Court rightly observed that the proposed amendment will change the nature of entire defence taken by the Respondent in his Written Statement, if the said amendment is allowed. A perusal of the Application (Exh. 43) filed by the Petitioners does not even show when the Petitioners came in possession of the said document i. e. Sale Deed of 1968 nor is there any mention that despite due diligence, the said document could not be procured earlier. The

Application is bereft of details.

6. Considering what is stated aforesaid, no infirmity can be found in the impugned order and as such, the Petition stands rejected.

7. Needless to state, that it is always open for the Petitioners to file appropriate proceeding on the basis of the said document i. e. Sale Deed in accordance with law. All contentions of all parties are kept open.

8. Accordingly, the Petition is disposed of.

(REVATI MOHITE DERE, J.)