

Anand

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

WRIT PETITION NO. 5341 OF 2019

Anjali Anant Shivilkar & ors.

.Petitioners

Vs.

Suhasni Shashikant Gadade & ors.

.Respondents

Mr. Kapil P. Shetye, Advocate, for the Petitioners

Mr. C. B. Kher i/b. Mr. Shami Karanade, Advocate, for the Respondents

CORAM : REVATI MOHITE DERE, J.

DATE : 21.01.2020

P. C.

. Heard learned counsel for the parties.

2. Rule. Rule is made, returnable forthwith with the consent of the parties and is taken up for final disposal at the stage of admission.

3. By this Petition, the Petitioners have impugned the order dated 25.01.2019 passed by the learned Jt. C. J. J. D., Ratnagiri below Exh. 35 in R. C. S. No. 240 of 2015, by which the learned Judge was pleased to allow the Respondent No. 1 / Original Plaintiff's Application for carrying out amendment in the plaint under O. VI, Rule 17 of the Code of Civil Procedure.

4. Learned counsel for the Petitioners submits that the

Respondent No. 1 / Original Plaintiff has filed a suit seeking partition of the suit premises and possession thereof. The said suit filed by the Respondent No. 1 / Original Plaintiff is R. C. S. No. 240 of 2015. The Petitioners / Original Defendant Nos. 1 to 3 and the Respondent Nos. 2 & 3 / Original Defendant Nos. 4 & 5 appeared in the said suit and filed their Written Statements. After the Written Statements were filed, the Respondent No. 1 / Original Plaintiff filed an Application (Exh. 35) under O. VI, Rule 17 of the Code of Civil Procedure and prayed for amendment of the plaint. By the said amendment, the Respondent No. 1 / Original Plaintiff amongst other reliefs prayed for eviction, which is seriously objected by the learned counsel for the Petitioners.

5. Learned counsel for the Respondent No. 1 / Original Plaintiff fairly states that the impugned order be quashed & set aside with liberty to the Respondent No. 1 / Original Plaintiff to file a fresh Application, if the need so arises. He states that he will not pray in the said Application, if so filed, for eviction of the Petitioners or any other Defendants.

6. In view of the aforesaid, the Petition is disposed of on the following terms & conditions :-

O R D E R

(i) The impugned order dated 25.01.2019 passed by the learned Jt. C. J. J. D., Ratnagiri below Exh. 35 in R. C. S. No. 240 of 2015 is quashed & set aside, with liberty as prayed.

All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)