

Anand

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

WRIT PETITION NO. 13263 OF 2017

Manohar Namdev Harmalkar & anr. .Petitioners

Vs.

Balvant Tukaram Harmalkar & ors. .Respondents

Mr. N. B. Khaire, Advocate, for the Petitioners

CORAM : REVATI MOHITE DERE, J.

DATE : 02.03.2020

P. C.

. Heard learned counsel for the parties.

2. By this Petition, the Petitioners have impugned the order dated 03.08.2016 passed by the learned District Judge-1, Gadhinglaj, District – Kolhapur below Exh. 34 in R. C. A. No. 1 of 2009, by which the learned Judge was pleased to reject the Petitioners' Application seeking amendment of the Written Statement, at the Appellate stage.

3. Learned counsel for the Petitioners submits that the proposed amendment is necessary to correct the typographical mistakes / wrong contents typed in the Written Statement filed in the suit. He submits that the said amendment is also necessary as the Respondents (Original Plaintiffs) were misleading the Court, about the

properties.

4. Perused the papers including the impugned order. The Respondent (Original Plaintiff) filed a Civil Suit, being R. C. S. No. 42 of 2003 in the Court of the learned C. J. J. D. , Ajara, District – Kolhapur as against the Petitioners (Original Defendants) and others for partition and separate possession of the suit properties. In the said suit, the Petitioners (Original Defendant Nos. 1 & 4) and others filed their Written Statement and denied the claim. The said suit was decreed by the trial Court vide Judgment and Decree dated 06.12.2008. Being aggrieved by the said Judgment and Decree passed by the learned trial Court, the Petitioners filed an Appeal, being R. C. A. No. 1 of 2009. During the pendency of the said Appeal, on 29.07.2015, the Petitioners i. e. Original Defendant Nos. 1 & 4 filed an Application seeking amendment of the Written Statement on the ground that there was a typographical mistake and some wrong contents mentioned in the Written Statement filed in the trial Court and as such, the same were required to be deleted. The said Application (Exh. 34) was rejected by the Appellate Court vide order dated 03.08.2016, which is impugned in the present Petition. As noted above, the suit was filed in 2003 and decreed in 2008. The Appeal against the said Judgment and Decree was filed in the year 2009 and thereafter, in 2015 i. e. almost 12 years of the filing of the suit, the Petitioners filed an Application seeking

amendment of the Written Statement. The grounds mentioned in the Application are not sufficient so as to warrant any amendment in the Written Statement. The learned Appellate Court has rightly rejected the Petitioners' Application seeking amendment of the Written Statement which was filed at the appellate stage, belatedly, after 12 years of the filing of the suit. The proposed amendment seeks to change the nature of the suit, which cannot be permitted. It also seeks to withdraw certain admissions which are already come on record in the trial Court.

5. Considering the aforesaid, no interference is warranted in the impugned order. The Petition is dismissed.

7. The Appellate Court to decide the Appeal on its own merits uninfluenced by the observations made in this order.

8. Accordingly, the Petition is disposed of.

(REVATI MOHITE DERE, J.)