

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

WRIT PETITION NO. 5425 OF 2018

Kiran Murlidhar Kulkarni and Another ..PETITIONERS

VERSUS

Devrao Khandu Dhalwade and Others ..RESPONDENTS

....
Mrs. M.V. Narwade, Advocate for petitioners
Mr. D.B. Rode, Advocate. for respondents
....

**CORAM : R.G. AVACHAT, J.
DATED : 02nd MARCH, 2021**

PER COURT :

1. Heard. The petitioners are the plaintiffs in Regular Civil Suit No. 22 of 2012. Said suit has been filed for declaration, injunction and possession of the properties described in paragraph no.1 of the plaint.

2. The sale deed executed on 06th April, 1988 by the father of the petitioners has been sought to be declared as having been got executed by practicing fraud, inducement and coercion. Pending the suit, the petitioners have filed application (Exh.67) for amendment of the plaint. By the said application, the plaintiffs prayed for impleadment of their sister – Geetanjali, as party defendant to the suit. The plaint is sought to be amended with a view to introduce some facts, that the mother of the petitioners has been absconding. The suit in that regard has been filed for relief of declaration.

The sister of the petitioners, sought to be impleaded as defendant to the suit, has not been in contact with the petitioners for over years. She has not claimed any interest in the property left behind by her father.

3. The trial Court rejected the application vide order dated 16th December, 2017. The trial Court observed that considering the nature of the suit and averments in the application (Exh.67), it appears that the said application has been filed for prolonging the suit. The trial of the suit has commenced. The petitioners are not diligent. Considering the nature of the suit, the proposed amendment is not necessary to decide the real controversy between the parties.

4. I find the trial Court to have rightly exercised discretion in rejecting the application for amendment of the plaint. The sale deed executed by the father of the petitioners way back in 1988, has been challenged in the year 2012. If the petitioners/plaintiffs would prove that the said sale deed was really got executed by practicing fraud, undue influences and coercion, the sale deed may be held to be non-est. A decree, if any, that may be passed in the suit, would enure for the benefit of all heirs of the deceased father of the petitioners. The sister of the petitioners is thus, not necessary party to the suit. Writ petition, therefore, devoid of any merit. Same is, therefore, dismissed.

5. The amount of Rs.5,000/- (Rupees Five Thousand) deposited by the petitioners pursuant to order dated 20th June, 2018, be paid them back.

(R.G. AVACHAT, J.)

SSD