

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9563 OF 2014**

Sandipan Keru Gaikwad

(Since Deceased), through LRs.:-

Kailas Sandipan Gaikwad and Ors.

....Petitioners

V/s.

Sanjay Janardhan Gaikwad and Ors.

....Respondents

Mr. Rajshekhar S. Alange for the Petitioners.

Mr. Bhalchandra S. Shinde for Respondent Nos.1, 2 and 4.

CORAM : NITIN W. SAMBRE, J.

DATE : MARCH 22, 2022.

P.C.:-

1] Prayer for amendment is opposed on the ground that fact about execution of Sale Deeds by Defendant No.1 in favour of Defendant No.3 was well within the knowledge of the Petitioners/Plaintiffs. It is claimed that Petitioners have not satisfied the test of due diligence, as the amendment sought is at much belated stage and the issues are also framed.

2] Considered submissions.

3] By way of interim order, suit remained stayed almost for a period of more than seven years. Suit is for declaration, partition and separate possession. As such, interest of the parties to the suit is common.

4] Fact remains that the Petitioners, by way of amendment, intend to incorporate such pleadings and claims which are necessary for adjudicating the *lis* between the parties. Insertion of certain properties, amplification of certain pleadings and challenge to the Sale Deeds cannot be termed to be taking the Respondents/Defendants by surprise, as already foundation to that effect is noticed in the plaint pleadings. Even if issues in the suit are framed, Petitioners/Plaintiffs are yet to enter into witness box.

5] In that view of the matter, order impugned passed on 10th June, 2014 below Exhibit-67 in RCS No.14 of 2005 by the Court of Civil Judge, Junior Division, Mohol is hereby quashed and set aside, subject to deposit of costs of Rs 10,000/- in the court below within a period of four weeks from today.

6] Application-Exhibit-67 stands allowed. Petitioners shall carry out amendment alongwith costs to be deposited. Court below may pass appropriate orders on apportionment of costs.

7] In case, aforesaid order is not complied with by the Petitioners, Court shall proceed with the suit proceedings.

8] Petition is accordingly disposed of.

(NITIN W. SAMBRE, J.)