

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

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WRIT PETITION NO.1986 OF 2022

Ramprasad Ramsharan Prajapati and Ors. ..Petitioners
Versus
Palakdhaari Ramsharan Prajapati and Anr. ..Respondents
Mr. Aniket P. Ranade, for the Petitioners.

CORAM : NITIN W. SAMBRE, J.

DATE : 24th FEBRUARY, 2022

PC.

1. Heard Mr. Aniket Ranade, learned counsel for the petitioners/defendants, whose prayer for amendment of written statement came to be rejected vide impugned order dated 28th September, 2021 passed below Exh.75 by the Joint Civil Judge Senior Division, Vasai.

2. Mr. Aniket Ranade would invite attention of this Court to the plaint and the written statement in Special Civil Suit No.52 of 2014 which is for partition. According to him, the nature of amendment in paragraphs 1 to 6 is formal in nature and that being so, the correction which is sought, if granted will not cause prejudice to the other side i.e. plaintiffs. He would further claim that other amendments and amendment in paragraphs 1 to 6 are necessary in the interest of justice for proper adjudication of claim canvassed in the suit.

3. I have considered said submissions in the light of the findings recorded by the Court below.

4. Admittedly, trial in the suit has commenced way back and the same has reached at quite advanced stage as the defendants have already entered into the witness box.

5. It is not the case that petitioners had no opportunity prior to moving Exh.75 of similar nature, however, petitioners have failed to avail the same and only after completion of recording of evidence of plaintiffs, have moved for amendment of the written statement so as to cover up the lacunas or substituting the admissions.

6. The Court below while dealing with said prayer has duly appreciated all the contentions of the petitioners/defendants and has justified in recording finding that the petitioners have failed to demonstrate due diligence.

7. That being so, no case for interference in the extraordinary jurisdiction of this Court is made out.

8. The petition as such fails, dismissed.

[NITIN W. SAMBRE, J.]