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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 1240 OF 2021

SAUDAGAR MAHADEO GAIKWAD AND ANR PETITIONERS

V/s.

MAHESH FAKKADRAO HONMANE RESPONDENTS
AND ANR

Ms. Manisha A. Devkar a/w Mr. Shankar Katkar Advocate for the
Petitioners

Mr. Purushottam G. Chavan Advocate for Respondents

CORAM : NITIN W. SAMBRE, J.

DATE: MARCH 8, 2022.

P.C.:

1) On instructions, challenge to the order passed below Exh. 88
thereby rejecting the prayer of the Petitioner for appointment of Court
Commissioner is not pressed by the counsel for the Petitioners.

2) Perused the order impugned passed below Exh. 71 whereby
prayer of Defendant no. 2 for amendment of written statement is
rejected vide impugned order dated 10/04/2018.

3) With the assistance, I have perused the pleadings in the Plaint and written statement.

4) The contentions of learned counsel for the Petitioner-Defendant are, it is necessary to amplify the stand taken by said Defendant in the written statement so as to appropriately meet the claim made in the Suit for partition and possession. According to her, once the Defendant no. 1 is deleted who happens to be predecessor in title of the present Petitioner, burden has shifted on the Petitioner to demonstrate before the Court to demolish the case of the Respondent-Plaintiff and for the said purpose, according to her, amplification of pleadings is necessary.

5) The pleadings which are sought to be inserted by way of amendment to the written statement if appreciated, same appears to be holding the field from the date of initiation of the Suit. Already, foundation for the same existed in the written statement. Trial in the Suit has reached at an advance stage as I am informed that evidence of Plaintiff is already concluded.

6) In the aforesaid background, considering the issues which are framed at Exh. 23, burden is on the Respondent-Plaintiff to prove the

same. In my opinion, Court below was justified in rejecting the prayer for amendment. That being so, no case for interference is made out.

7) Petition fails, stands rejected.

[NITIN W. SAMBRE, J.]