

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6441 OF 2021

Bhaguji Shankar Jadhav

Since deceased through his legal heirs

Shri. Prabhakar Bhaguji Jadhav and Ors.

..Petitioners

Versus

Shri. Khanderao Shankar Jadhav

Since deceased through his legal heirs

and Ors.

..Respondents

Mr. Pramod N. Joshi, for the Petitioners.

Mr. Sachin Gite, for the Respondents.

CORAM : NITIN W. SAMBRE, J.

DATE : 3rd FEBRUARY, 2022

PC.

1. The application Exh.85 came to be moved by the petitioners seeking amendment to the written statement at Exh.40. It is alleged by the petitioners/defendants that from September, 2018 to November, 2018, parties were trying to settle the dispute. It is further claimed that plaintiff No.1-A has produced memorandum of previous partition and application for production of the original memorandum of partition was rejected on 14th December, 2018. It is further claimed that the plaintiffs have adduced evidence on 15th March, 2018 and the petitioners/defendants commenced their cross-examination of the plaintiffs on 14th February, 2019.

2. In the aforesaid background, the submissions of Mr. Joshi, learned counsel for the petitioners are, the amendment which is sought to be introduced to the written statement is necessary for proper

adjudication of the claim. According to him, procedural step has resulted into causing delay in moving application as the petitioners were banking on original memorandum of partition. He would further claim that the respondents/plaintiffs will not be put to any prejudice, if the amendment is granted and the petitioner can be put to certain condition.

3. The prayer is opposed by the counsel for the respondents/plaintiffs.

4. I have considered submissions.

5. The petitioners already subjected the respondents/ plaintiffs to cross-examination on 14th February, 2019 and having noticed that there are certain lacunas have moved for amendment of written statement.

6. Since the trial in the suit has already commenced and the prayer for amendment is by way of afterthought i.e. after the Court has started recording of cross-examination of the plaintiffs' witness at the behest of the petitioners/defendants, I hardly see any reason which warrants grant of prayer for amendment of written statement. The Trial Court is justified in rejecting the prayer. That being so, no case for interference in the impugned order is made out.

7. The petition as such stands rejected.

[NITIN W. SAMBRE, J.]