

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6151 OF 2022

1. Baban Sakharam Kadam and Ors. ...Petitioners
(Orig.Defds no.1 to 4)
V/s.
1. Dattatray Dhondiba Nalawade ...Respondents
(Orig.Defds no.1 to 15)

Mr. Tejesh Dande a/w. Mr. Bharat Gadhavi a/w. Ms. Shama Mulla a/w. Mr. Pratik Sabral i/by. Mr. Pramod Kale,
Advocate for the petitioners.

Mr Pramod J. Pawar, Advocate for respondents no.2 to 4.

CORAM : SANDEEP K. SHINDE, J.

DATED : 19TH SEPTEMBER, 2022.

P.C :

1. Petitioners are the defendants no.1 to 4 in Special Civil Suit filed by the respondent no.1 for specific performance of agreement dated 30th March, 1996. The respondents no.2, 3 and 4 are the defendants no.5, 6 and 7. Petitioners and the respondents no.3, 4 and 7 are the cousins. They filed written statement on 10th March, 2011. In the Written Statement, petitioners and respondents no.2, 3 and 4 pleaded that the suit

property mentioned in para-1(a) is jointly owned by them being ancestral property inherited by their forefather. At the material time, they were represented by Advocate, Shri. Kokane. The trial Court, framed the issues and further framed additional issues on 19th October, 2021 at the instance of the petitioners. The parties led evidence and the matter was posted for arguments (as observed in para-10 of the impugned order). Thereafter, the petitioners (defendants no.1 to 4) moved an application under Order 6 Rule 17 of the Civil Procedure Code in August, 2019 seeking leave to amend the Written Statement. In the application, they pleaded that written statement jointly filed by them, contains incorrect statements/assertions. According to the petitioners, defendants no.5 to 7 played fraud, and persuaded Advocate Kokane to incorporate wrong pleadings. In the sense, the pleadings in paragraphs-3, 9, 10, 12, 19A, 19C and 19G of the Written Statement to the effect that, "suit land is ancestral property of the defendants no.1 to 7 and they are jointly cultivating and in possession of it", were false. According to the petitioners, defendants no.5 to 7 (their cousins) played fraud and mislead Kokane Advocate. Their further case is that, when they came to know of the incorrect pleadings in the Written Statement, they appointed another

lawyer and moved this application seeking leave to amend the Written Statement. The learned Judge rejected the said application. Thus, this petition.

2. At the first place, the petitioners moved an application seeking leave to amend the Written Statement after commencement of the trial. The first Written Statement was filed in March, 2011. Thereafter, the parties led the evidence. In the backdrop of these facts, it is not probable that the petitioners had no occasion to read the Written Statement, since 2011 till August, 2019. That apart, in the suit for specific performance of the contract, the amendment of the pleadings in the Written Statement as sought by the defendants, are not necessary, for determining the real question in the controversy. Thus, taking the overview of the matter, the application below Exhibit-102 moved by the petitioner seeking leave to amend the Written Statement, was neither bonafide nor maintainable. For all these reasons, the petition calls for no interference. It is dismissed.

(SANDEEP K. SHINDE, J.)