

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**WRIT PETITION 11330 OF 2012
WITH
CIVIL APPLICATION 2855 OF 2013
IN
WRIT PETITION 11330 OF 2012**

Baba Jagannath Kolekar & Anr.

..... Petitioners

VERSUS

Anil Parshuram Kolekar & Ors.

..... Respondents

None present.

CORAM : ROHIT B.DEQ, J.
DATE : 9TH JUNE, 2022

P.C:-

None appears on behalf of the parties.

2. However, considering that the petition pertains to the year 2012,

I have considered the contentions on merits.

3. The petitioners are the original plaintiffs who are assailing order dated 8th October, 2012 rendered in Suit 60 of 2006 whereby application Ex. 54 seeking amendment of plaint is rejected.

4. The suit is brought for decree of declaration that the sale deed executed by the defendants 2 and 3 in favour of the defendant 1 is illegal. Perpetual injunction restraining the defendants from interfering from the alleged possession of the petitioners - plaintiffs is sought.

5. The substratum of the plaint allegations is certain revenue entries which according to the plaintiffs indicate that the plaintiffs have share and interest in the property. A perusal of the averments in the plaint would reveal that the plaintiffs' claim to be co-owners of the property for reasons pleaded in paragraphs 2 and 3 thereof.

6. By amending the plaint, the plaintiffs seek to incorporate a plea that they have become owner by adverse possession.

7. It is too well settled that while inconsistent pleas can always be taken, by amending the plaint mutually exclusive or destructive pleas cannot be incorporated. In view of the decision in ***Ravinder Kaur Grewal & Ors. vs. Manjit Kaur & Ors., (2019) 8 SCC 729*** the plea of adverse possession can be raised by the plaintiff. However, for the

plaintiffs' to raise the plea of adverse possession *sine qua non* is renouncement of the claim of ownership. It would not be permissible for the plaintiffs to continue to assert the claim of the ownership and at the same time to claim that the title is perfected due to prescription.

8. I see no reason to interfere with the order impugned in writ jurisdiction. Writ petition is dismissed.

9. All pending applications are also disposed of.

[ROHIT B.DEO, J.]