

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

WRIT PETITION NO.7406 OF 2021

Smt. Shalini Dattatraya Khaire and Anr. ..Petitioners

Versus

Shri. Dnyaneshwar Govind Chondhe

Since deceased through legal heirs

Shri. Mangesh Dnyaneshwar Chondhe and Ors. ..Respondents

Mr. Prasad Rane a/w Mayur Bamble, Prashant Rathod & Komal Shinde, for the Petitioners.

Mr. Prasad B. Kulkarni, for the Respondents.

CORAM : NITIN W. SAMBRE, J.

DATE : 8th APRIL, 2022

PC.

1. Heard.

2. In Special Civil Suit No.129 of 2015 for partition and separate possession, application Exh.194 preferred by the petitioners/plaintiffs for amendment of plaint is rejected vide order impugned dated 19th November, 2019. As such, this petition.

3. The submissions are, trial in the suit has commenced, as petitioners/plaintiffs are in witness box. As such, even if prayer for amendment is granted, no prejudice will be caused to the respondents. He would further urge that the respondents/defendants are not taken by surprise, particularly, in view of the fact

that already there exist description of the property on which improvement is sought by way of amendment.

4. The prayer made is objected by the counsel for the respondent/defendant No.29, who happens to be purchaser of the suit property. His contentions are, there is absence of due diligence, as in the written statement filed in the year 2015, it was brought to the notice of the petitioners that the description of the property is incorrect or incomplete.

5. Considered submissions.

6. Considering the nature of the suit claim, which is for partition and separate possession and the fact that the description of the suit property is already given in the plaint, the correction in the description can be permitted by way of amendment. Even if it is claim of the respondent that there was absence of due diligence on the part of the petitioners, the petitioners can be put to condition, particularly, when it shall be open for the respondent/defendant to cross-examine the petitioners based on the amended pleadings also.

7. Rightly so pointed out by the counsel for the petitioners that in view of the position of law as reflected in the matter of ***Sajjan Kumar Vs. Ram Kishan*** reported in ***(2005) 13 SCC 89***, the petitioners can be said to be entitled for grant of amendment.

8. As such, the order impugned passed below Exh.194 on 19th November, 2019 is hereby quashed and set aside. The amendment stands allowed subject to payment of cost of Rs.10,000/- to be deposited in the Trial Court within a period of four weeks from today, to which respondent/defendant No.29 shall be entitled to withdraw.

9. The deposit of cost shall be condition precedent for carrying out amendment.

10. The petition as such stands disposed of in above terms.

[NITIN W. SAMBRE, J.]