

WRIT PETITION NO. 12928 OF 2017

Arjun Bhagwath Shinde and others .. Petitioners

Versus

Pandurang Yadhav Tat Died
Through L.Rs. Trivenabai Pandurang
Tat and others .. Respondents

Shri Anil M. Gaikwad, Advocate for the Petitioners.
Shri P. M. Nagargoje, Advocate for Respondent Nos. 1, 6 and 7.
Ms. Harsha Lomate, Advocate h/f Shri V. D. Salunke, Advocate
for the Respondent Nos. 2A, 3 and 4.

CORAM : SHARMILA U. DESHMUKH, J.
DATE : 05TH JANUARY, 2023.

FINAL ORDER :

Heard learned counsel appearing for the petitioner.

2. By the impugned order dated 08th September, 2017, the petitioners' application for amendment of the plaint has been rejected for the reason that the Trial has already commenced.

3. The petitioners who are original plaintiffs had filed a suit bearing R.C.S. No. 203 of 2004 seeking declaration of ownership and perpetual injunction against the defendant Nos. 1 to 7, who are respondent Nos. 1 to 7 herein. The petitioners' claim of ownership is based on a registered sale deed dated 24th May, 1989 executed between the petitioners and the defendant Nos. 8

to 11 in the suit. By the amendment application petitioners sought an amendment to bring on record the agreement of sale dated 04th July, 1986 executed between the parties and also averments pertaining to the possession of the petitioners pursuant to the agreement of sale. The petitioners by way of amendment also sought to bring on record the mutation entries based on the basis of agreement of sale of the year 1986.

4. The settled position as far as amendment of the pleadings post commencement of the trial is that only those amendments which inspite of due diligence could not have been brought on record are permitted. A perusal of the application of the petitioners seeking amendment of the plaint does not show that inspite of due diligence the said averments could not be made in the plaint. Admitted position is that agreement of the year 1986 was executed between the petitioners and the original vendors and, therefore, it cannot be said that the same was not within the knowledge of the petitioners when suit R.C.S. No. 203 of 2005 was filed. As the petitioners could not demonstrate that inspite of due diligence, petitioners could not bring said facts on record while filing plaint, no case is made out for interference of this Court. The writ petition is devoid of merits. The same is accordingly dismissed.

[SHARMILA U. DESHMUKH, J.]