

VRJ

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

WRIT PETITION NO.15185 OF 2022

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Sopan Krushna Sonawane & Ors. ... Petitioners

V/s.

Bhagwan Eshwara Sonawane & Ors. ... Respondents

Mr. Vaibhav R. Gaikwad for the petitioners.

Mr. Drupad S. Patil for the respondents.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 11, 2023

P.C.:

1. By the impugned order dated 2nd November 2022, the Trial Court rejected the application for amendment of written statement in suit for partition. The Trial Court rejected the application mainly on the ground that earlier defendants raised defence of previous partition and now the defendants want to raise defence of absolute ownership.

2. I have scrutinized the reason pleaded in paragraphs 1 and 3 of the application under Order 6 Rule 17 of the Civil Procedure Code, 1908. The reason pleaded by the petitioners is that they got knowledge of public documents in the form of revenue record recently which according to him confers exclusive ownership on the defendants.

3. The expression “due diligence” has been interpreted by the Supreme Court in the case of **Vidyabai And Others vs. Padmalatha And Another** reported in (2009) 2 SCC 409 to be a jurisdictional fact and unless reasons satisfying due diligence as interpreted by the Apex Court in paragraphs 19 and 20 of **J. Samuel And Others vs. Gattu Mahesh And Others** reported in (2012) 2 SCC 300 are satisfied, the Court would be justified in rejecting such application. Paragraphs 19 and 20 of the said judgment read as under:

“19. Due diligence is the idea that reasonable investigation is necessary before certain kinds of relief are requested. Duly diligent efforts are a requirement for a party seeking to use the adjudicatory mechanism to attain an anticipated relief. An advocate representing someone must engage in due diligence to determine that the representations made are factually accurate and sufficient. The term “due diligence” is specifically used in the Code so as to provide a test for determining whether to exercise the discretion in situations of requested amendment after the commencement of trial.

20. A party requesting a relief stemming out of a claim is required to exercise due diligence and it is a requirement which cannot be dispensed with. The term “due diligence” determines the scope of a party’s constructive knowledge, claim and is very critical to the outcome of the suit.”

4. Having scrutinized the cause mentioned in paragraphs 1 and 3 of the application for amendment, in my opinion, the said explanation cannot be equated with due diligence as contemplated by the said judgment.

5. It is not in dispute that the application is filed after the start of a trial. On 20th December 2017, affidavit in lieu of examination-

in-chief was filed. The application for amendment of written statement is filed on 18th April 2022. Therefore, in the absence of due diligence the Trial Court was justified in rejecting the application.

6. The writ petition is, therefore, dismissed. No costs.

(AMIT BORKAR, J.)