



**IN THE JUDICATURE OF HIGH COURT AT BOMBAY
BENCH AT AURANGABAD**

8 WRIT PETITION NO. 9837 OF 2024

Prataprao Ganpatrao Kadam Died Through Lrs Pramod Prataprao Kadam And Others

VERSUS

Ashokrao Ganpatrao Kadam Died His Lrs Anumati Alias Kesharbai Ashokrao Kadam Died And Others

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Advocate for the Petitioner : Mr. Salunke Sudarshan J

Advocate for Respondents No.1A to 1F, 3B to 3F and 4B: Mr. R. D. Kawade

Advocate for Respondent No.6 : Mr. Sambhaji S. Tope

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CORAM : ARUN R. PEDNEKER, J.

Dated : October 14, 2024.

PER COURT :-

1. By the present petition, the petitioners challenge the order passed by the Appellate Court, which dismissed the application filed by the original defendants/appellants for amendment of the written statement. It is the petitioners' contention that, in the application filed on 05/11/2022, appellants/defendants No. 4 and 7 had argued before the Appellate Court that the suit property was joint family property. They further contended that additional properties had been purchased by the legal heirs using resources derived from the joint family property. It was also submitted that the issue of whether one of the appellants was the adopted son needed to be considered and for that purpose amendment is necessary.

2. The learned Counsel for the petitioners argued that one branch of the joint family had not been made a party to the proceedings, and for this reason, the civil suit itself should be dismissed for non-joinder of necessary parties. The petitioners also sought leave to add the legal heirs as parties to the suit by incorporating the necessary amendments.

3. The Court dismissed the application, holding that all the legal heirs

of the family are already joined in the suit and that each member was aware of the properties purchased and the family's profession. Given the facts and the nature of the suit, the Court found that the application lacked merit, especially since it had been filed at the appellate stage after a delay of 15 years. The proposed amendment materially alter the suit and introduce a new cause of action, and as such, the application was dismissed.

4. As for the argument by the learned Counsel for the petitioners that one branch of the family had not been joined in the suit, the Court held that the petitioners were entitled to raise this plea, if available, before the Appellate Court. However, the application for amendment, having been filed at the appellate stage after a delay of 15 years and without due diligence, was rightly dismissed.

5. In view of the above, I see no reason to interfere with the impugned order passed by the Appellate Court. However, considering the submissions made by the parties, it would be appropriate for the Appellate Court to decide the appeal in accordance with the law within six months from the date of production of this order.

6. Accordingly, the petition is dismissed.

(ARUN R. PEDNEKER, J.)

vj gawade/-.