

Ajay

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

WRIT PETITION NO. 3097 OF 2024

Dipak Ramchandra Rashinkar and Anr. .. Petitioners

Versus

Babu Bala Hajam @ Gaikwad s/d.
Through his legal heirs and Ors. .. Respondents

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- Mr. D.V. Sutar a/w. Ms. Swatantri Waghmare, Advocates for
Petitioners.

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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 05, 2024.

P.C.:

- 1.** Heard Mr. Sutar, learned Advocate for Petitioners.
- 2.** The order impugned in the present Writ Petition is dated 20.02.2020 passed in Application under Order VI Rule 17 of the Code of Civil Procedure, 1908 (for short “**CPC**”) at a belated stage in the Suit. Suit was filed in the year 1999 seeking a declaration that the decree passed in Regular Civil Suit No.187 of 1982 in the year 1997 would not be binding upon the Plaintiffs.
- 3.** Be that as it may, after 25 years and almost at the completion of the trial before the learned Trial Court save and except the final arguments, the Plaintiffs have attempted to introduce a relief in the alternative stating that in the event if they fail in their principal reliefs, then they should be entitled to a share in the property of the successor-in-title of the Defendants. That alternative relief has been

reproduced by the learned Trial Court in paragraph No.8 of the impugned order. I have perused the same.

4. The reasons for rejection of this Application and the alternate relief given by the learned Trial Court are twofold namely that such an alternative relief can always be prayed for by the Plaintiffs at the inception itself and not at such a belated stage. Secondly by allowing such a relief, substantive rights of the legal heirs of the Defendants who have settled their rights in the Suit property would be clearly affected and allowing such a relief would change the nature and consequences of the Suit proceedings altogether.

5. Both these reasons are enumerated in paragraph No.9 of the impugned order and I find no reason to interfere with the same as they are cogent. That apart, in the present case since the amendment has been made at a belated stage after the entire witness action has been completed, it is trite that the Plaintiffs are now aware about the strength of their case on the basis of witness action and have therefore made this Application for such an amendment which is nothing but a complete afterthought on the basis of the strength of the evidence analyzed by the Plaintiffs. In that view of the matter, the proposed amendment ought not to have been allowed and therefore has been correctly not allowed by the learned Trial Court.

- 6.** The impugned order dated 20.02.2020 is upheld and sustained.
- 7.** The learned Trial Court is requested by this Court to dispose of pending Suit as expeditiously as possible and preferably within a period of 6 months from today strictly in accordance with law.
- 8.** The learned Trial Court is directed not to grant any unnecessary adjournments to the parties unless absolutely necessary.
- 9.** Parties are directed to cooperate with the Trial Court for expeditious disposal of the Suit proceedings.
- 10.** All contentions of the parties are expressly kept open before the learned Trial Court.
- 11.** With the above directions, Writ Petition is disposed.

[MILIND N. JADHAV, J.]