

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

Writ Petition No. 14113 of 2024

Shri Mayashankar Mataprasad Pandey and
others

... Petitioners

V/s.

Smt. Anusuya Haribhau Patil and others

... Respondents.

Mr. B.K. bali a/w. Ms. Pallavi Bali and Gaurav Shetye i/b.bali Associates	Advocate for the Petitioner
Mr. Jayant Gaikwad	Advocate for Respondent Nos.3,5,6,7(a) to 7(c).
Mr. Rajendra	Advocate for Respondent No.10.

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CORAM : S.M. MODAK, J

DATE : 02 December 2024.

P.C. :

Heard learned Advocate for the petitioners-plaintiffs and learned Advocate for respondents Nos.3,5,6,7(a) to 7(c) and learned Advocate for respondent No.10.

2. Initially, the suit for specific performance was filed on the basis of agreement dated 22 April 1996. The plaintiff is purchaser whereas defendant Nos.1 to 7 are vendors. Defendant Nos.8 to 9 are purchasers/assignee from defendant Nos. 1 to 7 whereas defendant No.10 is assignee from defendant Nos.8 and 9.

3. During the pendency of the suit, there was an agreement executed in between the plaintiffs on one hand and defendant No.10 on the other hand. It is dated 5 August 2016. According to the plaintiffs they are having two grievances about this agreement:

- (i) It was executed by misrepresentation and
- (ii) they have already returned the amount which they got on the basis of this agreement.

4. The plaintiffs are more worried about the effect of this agreement on the suit which is already pending and filed on the basis of agreement dated 22 April 1996.

5. **There are two aspects; allowing the amendment and merits of the amendment.** The trial Court rejected the application for the reason the cause of action on which the amendment application was moved is a separate cause of action.

6. **The said reasoning is proper** because the **foundation of the first suit is the first agreement dated 22 April 1996** whereas **foundation for the amendment application is agreement dated 5 August 2016** and the grievance by the defendants is as they are separate, the plaintiffs cannot seek amendment on the basis of fresh cause of action.

7. Now it is for the plaintiffs to think over what will be the effect on the first suit. The trial Court to deal with that issue whenever raised within the limits permissible by law. But in no case

amendment can be allowed. I find no merit in the petition. **It is dismissed.**

8. Liberty is sought on behalf of the petitioners to take appropriate steps. One does not know about those factual aspects whether the petitioners want to file suit or to take appropriate steps. So it is difficult to make any comments.

9. With these observations, the petitioners are at liberty to take appropriate steps and if taken, concerned Court to deal with the same purely on its merits.

10. It is made clear that this Court has not made any observations about entitlement of the petitioners to take those steps.

(S.M. MODAK, J.)