



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

WRIT PETITION NO. 5760 OF 2025

Ravita Alias Ravina Dinwaji Gavit And Another .. Petitioners

Versus

Vandana Baburao Gavit And Others .. Respondents

Mr. Sushil P. Pandit, Advocate for the Petitioners.

CORAM : KISHORE C. SANT, J.

DATED : 30th APRIL, 2025.

P. C. :-

. Heard learned advocate for the petitioners.

2. The petitioners are original plaintiffs in a suit filed before the learned Civil Judge Senior Division, Nandurbar bearing R.C.S. No. 59/2015. The petitioners are now aggrieved by an order passed below Exh. 91 allowing the defendants to amend the written statement by order dated 05.03.2025.

3. The learned advocate for the petitioners vehemently argued that, the suit is filed long back in the year 2015. The defendants appeared on 01.07.2015. The issues are framed on 08.10.2020. The defendants, however, now filed an application on 16.03.2023 seeking amendment in the pleading. The learned Court has allowed the application by

impugned order without considering the proviso to Order 6 Rule 17 of the Code of Civil Procedure. He submits that, it was necessary for the Court to ascertain that in spite of due diligence on the part of the defendants they could not get the document or could not get the knowledge of the fact which is sought to be introduced by way of amendment. He submits that, now the petitioners are taking contrary stand than already taken in the written statement. He thus criticizes the order and prays for allowing the writ petition.

4. By going through the application and the order it is appearing that, initially the defendants had taken a stand that they received the suit land in succession as they happen to be relatives of the deceased. Now, by way of application it is their case that, original owner had executed a will deed on 01.05.2012 and the same was registered on 02.05.2012. The defendants had no knowledge of the said will and they came to know the said fact very recently. The deceased died in the year 2016. It is, therefore, prayed that amendment be allowed by incorporating averment in respect of the will executed in their favour. The learned Court has considered that, though the application is at belated stage, the same needs to be considered as the will was not within the knowledge of the defendants. It is further observed that, while deciding the application liberal approach to be adopted.

5. Considering the above, this Court finds that, there is averment showing that the defendants were not aware of the will executed in their favour. Though no specific date is given of acquiring the knowledge of the deed, still this Court finds that, there is some justification. So far as inconsistent stand is concerned, that is no bar as such. It is only during the course of trial they have to adopt one of the stands while giving evidence.

6. This Court does not find that, any illegality is committed by the learned Trial Judge while considering the application. Consequently, this Court does not find any reason calling for interference at the hands of this Court. The writ petition, therefore, stands dismissed. No order as to costs.

(KISHORE C. SANT, J.)

PS.B.