



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6131 OF 2024**

Hari Baburao Sawant (deceased)
through legal heirs and Ors. ... Petitioners
versus
Tarabai Ananta Dhawade (deceased)
through legal heirs and Ors. ... Respondents

Mr. Chaitanya B. Nikte with Mr. Prajit S. Sahane, Mr. Ritvij A. Kale, Mr. Swapnil S. Sangle, Mr. Sakshi Thombre, for Petitioners.
Mr. Jaydeep Deo for Respondents.
Ms. D.S.Deshmukh, AGP for State.

CORAM: N.J.JAMADAR, J.

DATE : 27 MARCH 2025

P.C.

1. Heard the learned Counsel for the parties.
2. The challenge in this Petition is to an order dated 10 November 2023 passed by the learned District Judge, Pune on an application for amendment in the Written Statement in RCS No.328 of 2000.
3. The Respondent has instituted the said suit for partition of her 1/5th share in the suit property against Hari Sawant, the predecessor in title of the Petitioners. The said Suit was decreed by a judgment and order dated 16 September 2014. It appears that before the decree came to be passed, Hari Sawant passed away.
4. An appeal came to be preferred by the Petitioners in the capacity of the legal representatives of Hari Sawant. In the appeal, the Petitioners preferred

an application seeking amendment in the Written Statement to bring on record the factum of partition between Hari Sawant and the Petitioners and the mutation of the names of the Petitioners to the record of right of the suit property and certain additional contentions which, according to the Petitioners, disentitled the Plaintiffs from seeking partition.

5. By the impugned order, the learned District Judge was persuaded to reject the application.

6. From the perusal of the impugned order, it appears that the application came to be rejected solely on the ground that there was delay in filing the application for amendment. The learned District Judge has not at all adverted to the fact that the suit was instituted prior to 2000 Amendment to Order VI Rule 17 of the Code of Civil Procedure, 1908. Nor the application for amendment was examined on the parameters which govern the prayer for amendment in the pleadings. The consideration by the learned District Judge is simply inadequate. The impugned order, therefore, cannot be sustained and the application for amendment is required to be remitted back to the learned District Judge for a fresh decision in the light of the principles which govern the prayer for amendment in the pleadings.

7. Hence, the following order :

ORDER

- (i) The Writ Petition stands allowed.

(ii) The order dated 10 November 2023 stands quashed and set aside.

(iii) The application for amendment (Exh. 59) stands restored to the file of the learned District Judge.

(iv) Learned District Judge is requested to decide the said application along with the application to adduce additional evidence under Order 41 Rule 27 of CPC, as expeditiously as possible.

(N.J.JAMADAR, J.)