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

WRIT PETITION NO. 7157 OF 2015

MOHD YUSUF ABDUL SATTAR
VERSUS
JANABAI PRAKASH UDAVANT AND OTHERS

...
Advocate for Petitioner : Shri M.S.Chaudhari h/f Chaudhari Md.
Mujeebuddin MS.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 28th August, 2015

Per Court:

1 The Petitioner seeks to challenge the order dated 24.03.2015 passed by the Trial Court below Exhibit-32 thereby, rejecting the application for amendment under Order 6 Rule 17 of the Code of Civil Procedure, in RCS No.548/2012.

2 The contention is that the suit is for specific performance of the contract. There is an agreement of sale between the Petitioner/Plaintiff and Prakash Udavant. The said Prakash is now deceased. His legal heirs in the form of his sons Nitin and Sachin (Respondent Nos.2 and 3) are before the Court.

3 The Petitioner preferred an application Exhibit-32 seeking permission to amend the suit and convert the same into a suit for specific performance of contract, for partition and separate possession. Coupled with the said request, the persons mentioned in the application from Sr.Nos.5 to 14 are sought to be arrayed as Defendants in the suit. The said application has been rejected by the Trial Court.

4 Shri Chaudhari, learned Advocate for the Petitioner, submits that the Petitioner/ Plaintiff would seek partition of the ancestral and joint properties of the joint family of the deceased Prakash. All the persons mentioned in the application are, therefore, necessary in the said suit. The Trial Court has erroneously rejected the application.

5 I have considered the submissions of Shri Chaudhari. The suit is for specific performance of the agreement dated 26.04.2010, which has been executed by the deceased Prakash. The Petitioner as yet, does not have title over the property. It is only pursuant to the decision in his suit for specific performance that he is likely to benefit out of a decree passed in his favour.

6 In the above backdrop and prior to crystallizing the rights of the Petitioner with regard to the property, which is subject matter of the

agreement of sale, there cannot be a suit for partition and separate possession. The Trial Court has, therefore, rightly passed the impugned order.

7 Shri Chaudhari submits that the Trial Court has concluded that the Plaintiff is not having any share in the suit property and the Plaintiff is yet to have any right in the suit property. Therefore, he cannot claim partition of the suit property. He submits that this is likely to create an obstacle in his suit.

8 I find that the Petitioner's apprehension is misconceived. The observations of the Trial Court as noted above and which are set out in paragraph 6 of the impugned order, are in relation to the application filed by the Petitioner for converting the suit into a suit for partition and separate possession. The observations are, therefore, restricted to application Exhibit-32.

9 With the above observations, this Writ Petition is disposed of.

(RAVINDRA V. GHUGE, J.)