

1. Not on Board. At the request of Mr.Kulkarni, taken up in production board. Heard Mr. Rahul Kulkarni, learned counsel for the petitioner.
2. Heard Mr. Rahul Kulkarni, learned counsel for the petitioners at length.
3. By this Petition under Article 227 of the Constitution of India, original plaintiffs have challenged the Judgment and order dated 26.2.2015 passed by the learned Civil Judge, Jr. Dn., Peth-Vadgaon, below Exhibit 294 in Civil Suit No.136 of 1999. By that order, the learned trial Judge allowed application-Exhibit 294 filed by defendants under Order VI, Rule 17 of C.P.C. for amending written statement and counter claim. By the proposed amendment, the defendants sought to substitute boundaries in paragraph 13(b) of the counter claim. The defendants intend to

maintain eastern and western boundaries as is set out in the written statement and counter claim and want to substitute northern and southern boundaries.

4. In support of this Petition, Mr. Kulkarni strenuously contended that application for amendment is taken out in the year 2015, that is to say almost after 13 years. He further submitted that if the amendment is allowed, vested right conferred by law in favour of the plaintiffs will be taken away. Same is not permissible. He further submitted that as the trial has already commenced and the matter is kept for final arguments, at that stage the defendants moved application. The learned trial Judge ought to have disallowed the application. In support of this submission, he relied upon the decision of the Apex Court in the case of Vidyabai Vs Padmalatha, 2009 (4) Mh.L.J. 30 and in particular paragraph 8 thereof. In paragraph 8 thereof, the Apex Court observed that the date on which the issues are framed is the date for first hearing. Provisions of C.P.C. envisage taking of various steps at different stages of the proceedings. Filing of an affidavit in lieu of examination-in-chief of the witness would amount to 'commencement of proceedings'. He, therefore, submitted that as the trial has already commenced, the defendants did not satisfy the requirements of proviso to Order VI, Rule 17.

5. I have considered the submissions advanced by Mr

Kulkarni. I have also perused the material on record. The learned trial Judge while allowing the application for amendment has categorically recorded a finding that by the proposed amendment, the defendants want to substitute boundaries given in the counter claim. By the proposed amendment they are giving boundaries which are also described by the plaintiffs in paragraph 1 of the Plaint. That apart, the defendants have retained eastern and western boundaries and propose to change northern and southern boundaries. By the proposed amendment, the nature of the suit is not changed. Though after evidence is over the defendants have filed application for amendment, the parties have given evidence in respect of the same property. The defendants have also claimed possession of the property in respect of which the plaintiffs have instituted suit for perpetual injunction and declaration. The learned trial Judge held that the proposed amendment does not change the nature of counter claim.

6. In view of these findings as also having regard to the fact that the suit is of the year 1999, the same cannot be said to be governed by amended provisions of Order VI, Rule 17. Suit is governed by provisions of unamended Order VI Rule 17. Reliance placed by Mr Kulkarni on the decision of Vidyabai (supra), therefore, does not advance the case of the plaintiffs. Hence, Petition fails and the same is dismissed. It is, however, expressly

made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

(R.G.KETKAR, J.)