

The property is self acquired property of the defendants. Even in paragraphs 10 & 11, it is reiterated that the property in dispute is not an ancestral property. Consequently, plaintiff has no right, title, interest and claim in respect thereof. However, by the proposed amendment, defendants No. 10 & 11 have contended that the suit property is an ancestral property. This virtually amounts to withdrawal of admissions given in paragraph 4 of the written statement. He submitted that even if defendants are entitled to raise any inconsistent plea, however, defendants cannot withdraw the admissions once given in the written statement. By proposed amendment, defendants have withdrawn the admissions given in the written statement.

4. It is not possible to accept this submission. In paragraph 5, the learned trial Judge has recorded that trial of the present suit is yet to begin. In view thereof, proviso to Order 6 Rule 17 of C.P.C. will not be applicable. It is further observed that application for amendment in the written statement is to be considered liberally and defendant can take inconsistent pleas in their written statement or by introducing amendment. Only question before the Court is that as to whether by virtue of proposed amendment, defendants intend to withdraw the admissions given in the written statement. In paragraph 6, the learned trial Judge has recorded that proposed amendment will not wash out any admission given by the defendants

and that proposed amendment is necessary for deciding controversy in between the parties. In my opinion, the learned trial Judge has recorded a categorical finding that proposed amendment does not wash out admissions given by the defendants. Having regard to the fact that the trial is yet to commence as also the impugned order is purely discretionary, I do not find that this is a fit case for invoking powers under Article 227 of the Constitution of India. Hence, Petition fails and the same is dismissed. It is, however, expressly made clear that where a decree is appealed from by the petitioners, 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.)