

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.491 OF 2015

Mr. Balaram Tatu Mhase

..Petitioner

Vs

Mr. Sharad Laxman Shinde

.. Respondent

Mr. Rohit D.Joshi, Advocate for Petitioner.

CORAM : R.G.KETKAR,J.

DATE : 16/06/2015

PC:

1. Not on Board. At the request of Mr. Joshi, taken up in production board. Heard Mr. Rohit Joshi, learned counsel for the petitioner.

2. By this Petition under Article 227 of the Constitution of India, original plaintiff has challenged the Judgment and order dated 12.8.2014 passed by the learned Civil Judge, Jr. Dn., Karjat, District - Raigad, below Exhibit-61 in R.C..S. No.44 of 2010. By that order, the learned trial Judge rejected the application made by the plaintiff under Order VI Rule 17 of C.P.C for amending the Plaint.

3. In support of this Petition, Mr. Joshi reiterated the submissions that were made before the trial Court. He submitted that in order to avoid multiplicity of the proceedings, the proposed amendment ought to have been allowed. He submitted that the amendment is absolutely necessary for deciding real controversy between the parties.

4. By the impugned order, the learned trial Judge has rejected the application mainly on the ground that the proposed amendment changes the nature of the suit. With the assistance of learned counsel appearing for the parties, I have perused the Complaint, application for the proposed amendment as also the impugned order. In paragraph 2 of the Complaint, the petitioner claims that the suit property is joint family property. As against this, by the proposed amendment, he claims declaration that he has become owner by adverse possession. Once the petitioner-plaintiff claims that the suit property is joint family property, he being the plaintiff, cannot take inconsistent plea. The plaintiff has also, in the alternative, claimed declaration that he is a tenant. The learned trial Judge, in my opinion, rightly held that the proposed amendment changes the nature of the suit. In view thereof, no case is made out for invocation of 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 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 Memorandum of Appeal as contemplated by Section 105(1) of C.P.C.

(R.G.KETKAR, J.)