

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION (ST) NO. 10354 OF 2016**

Abdul Sattar s/o Abdul Balaqi
Farooqui

Petitioner

Vs

A.H.Wadia Charitable Trust

.. Respondents

Mr.A.A.Siddiqui, Advocate for Petitioner.

Mr. Yahya Goghari a/w Pratik V Shah and Priyanka Variath i/b Vigil
Juris, Advocate for Respondents.

CORAM : R.G.KETKAR,J.

DATE : 28/04/2016

PC:

1. Heard Mr.A.A.Siddiqui, learned counsel for the petitioner and Mr. Yahya Goghari, learned counsel for the respondents at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the Judgment and order dated 18.3.2016 passed by the learned Judge, presiding over Court Room no.2 of the City Civil Court at Mumbai, Borivali Division, Dindoshi, Goregaon, Mumbai in Chamber Summons no.187 of 2016 in Suit No.299 of 2005. By that order, the learned trial Judge partly allowed the Chamber Summons taken out by the petitioner, hereinafter referred to as 'plaintiff', subject to payment of costs of Rs.20,000/- to Legal Services Authority (LSA). The learned trial Judge permitted the plaintiff to incorporate paragraph 45-A. The learned trial Judge rejected the prayer made by the plaintiff for deleting the words from prayer clause "without

following due process of law” on the ground that no case is made out for deletion of these words.

3. The plaintiff has instituted suit for declaration that he has become owner of the suit land by adverse possession and the defendants have ceased to be owners thereof and that the defendants have no right to forcibly dispossessed the plaintiff from the suit property without following due process of law.

4. During the pendency of the suit, the plaintiff took out Chamber Summons No. 187 of 2016 under Order VI, Rule 17 of C.P.C.. for adding paragraph 42A after paragraph 42 in the plaint and for deleting the words 'without following due process of law”. In support of the Chamber Summons, affidavit of the plaintiff dated February 1916 was made. In paragraph 6 of the affidavit in support, it is contended that by inadvertent mistake, the additional words, I.e “without following due process of law” are added. Due to inadvertent mistake and error in the prayer clause (a), the plaintiff is advised to take out Chamber Summons. By the impugned order, the learned trial Judge has rejected the application.

5. In support of this petition, Mr. Siddiqui strenuously contended that no prejudice would be caused to the defendants by allowing the amendment. The learned trial Judge should have permitted the plaintiff to delete the words “without following due process of law” as due to inadvertent mistake, the error has crept

in the prayer clause.

6. On the other hand, Mr. Goghari supported the impugned order.

7. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. As noted earlier, the learned trial Judge has partly allowed the Chamber Summons and permitted the plaintiff to incorporate paragraph 42A. As far as permission to delete the words “without following due process of law” is rejected on the ground that no reason is set out in support of this prayer. With the assistance of learned counsel appearing for the parties, I have perused the affidavit in support of Chamber Summons. In paragraph 6 of the Chamber Summons, the plaintiff has merely averred that by inadvertent mistake, additional words “without following due process of law” are added. I do not find that the plaintiff has made out a case for deletion of these words. It is not in dispute that suit is instituted in the year 2005. The plaintiff will have, therefore, to satisfy the conditions stipulated in proviso to Order VI, Rule 16 of C.P.C, namely, he has to make out a case for due diligence. Now, it is not in dispute that the matter is kept for judgment tomorrow and at that stage the Chamber summons is taken out. In view thereof, I do not find that the learned trial Judge has committed any error in passing the impugned order. 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.)