

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8844 OF 2011**

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
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Mr.N.Y. Chavan, Advocate for Petitioner.
Mr.Ramkrishna Yedave i/b. Vijay Killedar,
Advocate for Respondents No.1 & 2.

CORAM : R. G. KETKAR, J.

DATE : 29/11/2016

P.C.:

1. Heard Mr.Chavan, learned Counsel for the petitioner and Mr.Yedave, learned Counsel for respondents No.1 and 2, at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'defendant No.2' has challenged the judgment and order dated 24.6.2011 below Exhibit-52 as also the order dated 12.8.2011 below Exhibit-60 in R.C.S. No.36/1998 passed by the learned Civil Judge, Junior Division, Jath.
3. By order dated 24.6.2011, the learned trial Judge allowed the application made by the respondents/plaintiffs under Order VI Rule 17 of C.P.C. for amending the plaint so as to insert the description of boundaries before property 1(A). The plaintiffs also desired to amend paragraphs No.1, 2 and 5 of the plaint. By order dated 24.6.2011, the learned trial Judge allowed the application subject to costs of Rs.500/-. The learned trial Judge observed that the suit is for partition of landed and

house properties. It is observed that if the amendment is allowed, no prejudice will be caused to the defendants. In order to decide the real controversy between the parties, it is necessary to allow the application for amendment.

4. In view thereof as also having regard to the fact that the nature of the suit does not change, I do not find that the learned trial Judge committed any error in passing the order below Exhibit-52. The suit is filed in the year 1998 and is, therefore, governed by the unamended C.P.C. Mr. Chavan submitted that though the application for amendment is allowed the plaintiff did not carry out the amendment and, therefore, the application was filed by defendant No.2 at Exhibit-60. The plaintiffs opposed that application on the ground that the plaintiff filed corrected amended plaint. By order dated 12.8.2011, the learned trial Judge disposed of the application Exhibit-60 by keeping the objections of defendant No.2 open as regards the description of the property. As the learned trial Judge has not concluded the objection raised by defendant No.2, no case is made out for interfering with the impugned order. Hence, the Petition fails and the same is dismissed.

5. It is made clear that where a decree is challenged by the petitioner, any error, defect or irregularity in impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of the proposed proceedings as contended by section 105(1) of C.P.C.

(R. G. KETKAR, J.)