

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 961 OF 2015

Subhash Ramrao Shelke and another .. Petitioners

Versus

Gafarkhan Haji Khaja Khan .. Respondent

Shri J. M. Murkute, Advocate for Petitioners.
None present for the Respondent.

**CORAM : S. V. GANGAPURWALA, J.
DATE : 13TH DECEMBER, 2017.**

FINAL ORDER :

. Application seeking amendment by introducing relief of declaration is allowed. Aggrieved thereby present writ petition.

2. Mr. Murkute, the learned advocate for petitioners submits that, the respondent has not shown due diligence. After the issues were framed, the matter was fixed for evidence of the plaintiff and the plaintiff filed application for amendment. The reasons given for amendment are erroneous. Vague averments are made. After 42 years, the plaintiff filed proceeding before the S.L.R. The said proceeding is rejected. The same cannot be a ground for the plaintiff to file amendment application seeking relief of declaration. Without explaining due diligence, application for amendment could not have been entertained. The learned

counsel relies on the judgment of the Ajendraprasadji N. Pande and another Vs. Swami Keshavprakeshdasji N. and others reported in *AIR 2007 SC 806*.

3. The Trial had not commenced. The plaintiff had not led his evidence.

4. The suit was for simplicitor injunction. By way of amendment, plaintiff sought relief of declaration of ownership. The Trial Court has considered the aspect in a proper manner in the impugned order. Even otherwise, the petitioners will have every right to controvert said averment by filing additional written statement.

5. Considering the fact that, discretion has been exercised by the Trial Court in reasonable manner, I am not inclined to exercise my jurisdiction under Article 227 of the Constitution of India. The writ petition as such is disposed of. No costs.

[S. V. GANGAPURWALA, J.]