

Anand

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

WRIT PETITION NO.2870 OF 2017

Jayant Vitthal Shinde .Petitioner

Vs.

Surekha Jayant Shinde .Respondent

Mr.Sagar A. Joshi, Advocate, for the Petitioner

CORAM : R.G.KETKAR, J.

DATE : 24.03.2017

P.C.

. Heard Mr. Joshi, learned counsel for the Petitioner at length.

2. By this Petition under Article 227 of the constitution of India, the Petitioner, hereinafter referred to as 'Defendant' has challenged the Judgment and Order dated 05.11.2016 passed by the learned 2nd Jt.C.J.J.D., Sangola below Exh.104 in R.C.S.No.176 of 2006. By that order, the learned trial Judge allowed the Application made by the Respondent under Order VI, Rule 17 of the Code of Civil Procedure, 1908 (For short "CPC") for amending the plaint subject to payment of costs of Rs.3,000/- to the Defendant within 14 days.

3. In support of this Petition, Mr. Joshi invited my attention to the suit instituted by the Respondent and the prayers made therein. He submitted that suit is instituted in the year 2006. He submitted that issues were framed on 05.02.2012. Application for amendment was made on 26.07.2016 after Plaintiff filing closure pursis on 07.09.2015. He submitted that the Plaintiff has not satisfied conditions stipulated in proviso to Order VI, Rule 17 of CPC. No case is made out for filing the Application for amendment after ten years from filing of the suit. He, therefore, submitted that the impugned Order deserves to be set aside.

4. I have considered rival submissions advanced by Mr. Joshi. I have also perused the material on record. In paragraph 3 of the plaint, Respondent asserted that she had purchased the suit property in the name of Defendant by providing consideration amount. The learned trial Judge has considered this aspect in paragraph 18 of the impugned Order. By the impugned Order, the learned trial Judge also noted that Advocate for the Plaintiff submitted that Plaintiff does not wish to lead any additional evidence to only want to add alternative prayer of declaration. Mr. Joshi submitted that in the Application for amendment, the only reason given was that inadvertently prayer for declaration of Plaintiff's ownership was not made. He submitted that this cannot be

valid reason for filing Application for amendment after ten years.

5. For the reasons recorded in paragraphs 8, 9 & 10 of the impugned Order, I do not find that any case is made out for interfering with the impugned Order. Hence, Petition fails and same is dismissed. The learned trial Judge will decide the suit on the basis of evidence on record uninfluenced by the observations made in this Order. It is made clear that where a decree is challenged 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 the memorandum of the proceedings as contemplated by Section 105(1) of C.P.C.

(R.G.KETKAR, J.)