

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

WRIT PETITION NO. 6863 OF 2018

SUNAMBAI UTTAMRAO KUMBHAR
VERSUS
MURLIDHAR TRIMBAK WANI AND ANOTHER

...
Advocate for Petitioner : Mr. Bhandari Anand P.

...
CORAM : V.K. JADHAV, J.
Dated: August 13, 2018
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PER COURT :-

1. Learned counsel for the petitioner submits that, in the inquiry as contemplated under Order XX Rule 12 of the Civil Procedure Code, amendment in the application filed by the decree holder is not permissible at any stage or even at the later stage and, further, if such amendment is sought, the question of limitation would arise. Learned counsel submits that, the provisions of Order VI, Rule 17 cannot be made applicable to the proposed enquiry under order XX Rule 12 of the Civil Procedure Code.

2. It is needless to say that, claim for mesne profit virtually a claim for damages. There is no rigid rule for

determining the amount of mesne profits and the amount must be ascertained in every case by proper exercise of judicial discretion. An order XX Rule 12 of Civil procedure Code directing an enquiry as to the mesne profits only creates a right in favour of the plaintiff and, it is only when the trial court determined the amount of mesne profit, right to receive the same accrues. In view of the same, I do not find any substance in this writ petition. The petitioner/original J.D. can contest the amendment sought to be introduced and, it is only after conclusion of the enquiry, as aforesaid, final decree in terms of the said conclusion of the enquiry is drawn. Writ petition accordingly dismissed. No costs. Needless to say that, the petitioner is at liberty to file say/written statement to the amendment introduced by respondent/deGREE holder.

(V.K. JADHAV, J.)

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aaa/-

Anuja
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