

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

WRIT PETITION NO. 5720 OF 2018

Nawab Sharfuddin Shanediwan ... Petitioners
(deceased through its legal heirs)
Asma Bobid Khan & Ors.

Versus

Shri Nazir Ahmed Sharfuddin Shanediwan ... Respondents
and Ors.

Mr. Harshad Sathe I/by Shrikrishna Ganbavale for Petitioners.

**CORAM : NITIN W. SAMBRE, J.
DATE : JUNE 25, 2018.**

P.C. :

. Heard Mr. Ganbavale, the learned Counsel for Petitioners at length.

2. The order impugned dated 31st January 2018 passed by the learned 4th Joint Civil Judge Senior Division, Kolhapur in Special Civil Suit

No. 177 of 2003, permitting amendment to the plaint in a suit for partition and separate possession is subject matter of challenge.

3. According to him, originally the suit was lodged in the year 1993 bearing Regular Civil Suit No. 689 of 1993, which was re-numbered as Regular Civil Suit No. 177 of 2003 and it is for the third time the prayer of Respondent No.1 – Plaintiff for grant of amendment is allowed. He would urge that since the trial in the suit has already commenced viz – issues are framed, the order impugned is not sustainable and it is contrary to the scheme of Order 6 Rule 17 of the Code of Civil Procedure.

4. The submission of the learned Counsel for the Petitioner – original Defendant No.1 are analyzed in the light of the pleadings in plaint and the reasons which are furnished by the learned court below while exercising powers under Order 6 Rule 17 of the Code of Civil Procedure allowing the amendment in a suit for partition, it is required to be presupposed that the parties to the suit are tenant in common. The procedure contemplates of passing of a preliminary decree in regard to the properties disclosed in the plaint in a suit for partition, needs to be appreciated and accordingly precept is sent for execution to the Revenue

Authorities. Application (Exhibit – 259) for the amendment speaks of addition of the property in the schedule. Apart therefrom, there is no other amendment sought by the Respondent No.1 – Plaintiff to the suit.

5. Considering the nature of amendment as prayed, in my opinion, the learned trial court has rightly inferred that the nature of claim/relief in the suit will not undergo any change.

6. Apart from above, it will be difficult to accept the contention of the Petitioner that by framing issues, the trial in the suit has commenced.

7. In the aforesaid background, the trial court by awarding costs of Rs. 3000/- to the Petitioner has appropriately worked out the equities in favour of the present Petitioner.

8. In the aforesaid background, in extraordinary jurisdiction no interference is called for.

9. Writ Petition lacks merit. Hence, the same is dismissed.

(NITIN W. SAMBRE, J.)