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

WRIT PETITION NO. 1308 OF 2015

Shivram Dagdu Thopate & Ors.	...Petitioners
vs	
Mahadev Alias Mahadu Dagdu (deceased) through LR's & Ors.	...Respondents
.....	
Mr Dhairyasheel Sutar for the Petitioners.	
None for the Respondents.	

.....
**CORAM : B.P.COLABAWALLA, J.
DECEMBER 17, 2018.**

P.C. :

This Writ Petition challenges the order passed by the Trial Court dated 7th November, 2014 passed below Exh.99 in Regular Civil Suit No. 1263 of 2007. Exh.99 was an application filed by the Plaintiffs under Order VI Rule 17 of the Code of Civil Procedure, 1908 (for short "the CPC") seeking an amendment of the plaint. This application was rejected by the Trial Court on two grounds. Firstly, the Trial Court held that the suit was filed in the year 2007 and the parties had already led their evidence and undergone cross-examination. The application for amendment was filed at the stage of final arguments. This being the case, the amendment could not be allowed as the trial had already commenced as stipulated under the proviso to Order VI Rule 17 of the CPC. Over and above this, the Trial Court also came to a finding that all that was sought to be brought on

record by virtue of the amendment was well within the knowledge of the Plaintiffs long before the trial had commenced. This being the case, the amendment could not be allowed. The Trial Court also came to the conclusion that if the amendment was allowed it would entirely change the nature of the suit. The Trial Court came to this conclusion because the suit as originally filed was for a declaration that the sale-deed entered into by Defendant No.1 with Defendant No.2 is null and void and for an injunction restraining the Defendants from disturbing the possession of the Plaintiffs. The amendment now sought a partition of the ancestral property and also for recovery of possession. It is in these circumstances that the Trial Court was of the opinion that the amendment would change the nature of the suit, and therefore, dismissed Exh.99 even on this ground.

2 Learned advocate appearing on behalf of the Petitioners submitted that the amendment that was sought was merely consequential to what was already pleaded in the plaint, and therefore, the Trial Court was completely wrong in observing that the amendment would change the nature of the suit. He, therefore, submitted that this being only consequential amendments, the rigours of the proviso to Order VI Rule 17 of the CPC would not apply and the Court to do complete justice between the parties is certainly

empowered to allow the amendment. In support of this proposition the learned advocate relied upon a decision of the Supreme Court in the case of **Abdul Rehman and anr. Vs. Mohd. Ruldu & Ors.** reported in **(2012) 11 Supreme Court Cases, 341**. He, therefore, submitted that the impugned order be set aside and the amendment application filed by the Plaintiffs be allowed.

3 I am unable to agree with the submissions made on behalf of the Petitioners. It is not in dispute before me that the suit was filed in the year 2007. In the Written Statement filed by the Defendants, the possession of the Plaintiffs was disputed. This was way back in the year 2012. Despite this, no amendment application was filed by the Plaintiffs until the parties had led their evidence and also undergone cross-examination. This being the case, I do not find that the Trial Court was incorrect or in any way wrong in dismissing the amendment application. Admittedly it was not the case where the amendment was sought on facts which were not to the knowledge of the Plaintiffs prior to the commencement of the trial or that he had carried out any due diligence with respect to the same. Admittedly all facts that were sought to be brought on record were known to the Plaintiffs long before commencement of the trial. This being the case, clearly this amendment could not have been allowed in view of the bar

as set out in the proviso to Order VI Rule 17 of the CPC.

4 I also find that the Trial Court was not wrong in coming to the conclusion that by allowing the amendment it would change the nature of the suit. As mentioned earlier, the suit as originally filed was seeking a declaration that the sale-deed entered into by Defendant No.1 in favour of Defendant No.2 was null and void and for an injunction restraining the Defendants from dispossessing the Plaintiffs. By virtue of the amendment now the Plaintiffs were seeking partition as well as recovery of possession. This is not based on any subsequent facts either. This being the case the Trial Court was correct in coming to the conclusion that by allowing the amendment, it would change the nature of the suit.

5 As far as the decision of the Supreme Court in the case of **Abdul Rehman & Anr.**(supra) is concerned, I find that this decision is against the Petitioners (original Plaintiffs) rather than in their favour. The Supreme Court, after analyzing the provisions of Order VI Rule 17 of the CPC, in paragraph 17, has clearly held that if an application for amendment is made after the commencement of the trial, in that event, the Court has to arrive at the conclusion that in spite of due diligence, the party could not have raised the matter

before the commencement of the trial. In this case, what the Supreme Court was considering was whether the amendment was changing the nature of the suit as held by the Trial Court and thereafter by the High Court. Analyzing that contention, in paragraph 13, the Supreme Court has opined that the entire factual matrix for the relief sought for under the proposed amendment had already been set out in the unamended plaint. The Supreme Court opined that the challenge to the voidness of the sale-deed was implicit in the factual matrix set out in unamended plaint, and therefore, the relief of cancellation of those sale-deeds as sought for by the amendment did not change the nature of the suit. I fail to see how this decision can be of any assistance to the Petitioners (original Plaintiffs). In the case before the Supreme Court it was not as if the amendment application was filed after the commencement of the trial. In fact the finding given by the Supreme Court in paragraphs 10 and 11 are clearly against the Plaintiffs and not in their favour.

6 In these circumstances and in view of the foregoing discussion, I find no merit in this Writ Petition and it is accordingly dismissed. However, there shall be no order as to costs.

(B.P.COLABAWALLA, J.)