

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

WRIT PETITION NO. 1402 OF 2018

Rajendra Shashikant Malkar	...	Petitioner
V/s.		
Smt.Rajashri Siidhlinga Swami & Ors.	...	Respondents

- Mr.Datta H. Pawar for the Petitioner.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 15th MARCH, 2018.

P.C. :

- 1] Heard learned counsel for the Petitioner.
- 2] By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioner is challenging the order dated 3rd January 2018 passed by the 2nd Jt. Civil Judge Senior Division, Kolhapur, below the Application at Exhibit-88 in Special Civil Suit No.184 of 2012.
- 3] The Application at Exhibit-88 was filed by the Respondent/Plaintiff for amendment in the plaint seeking her 1/4th share in the profit account regarding Avanti lodge property. According to her, out of the nucleus of the joint family property, the said lodge

was purchased and the business is started and in a suit for partition she is also entitled not only to get her 1/4th share in the joint family property but also 1/4th share in the profit of the said lodge. The trial Court has allowed the said application holding that the proposed amendment will not change the nature of the suit nor cause any harm to the other side.

4] According to learned counsel for the Petitioner in a suit simpliciter for partition of the joint family property, now the Respondent/Plaintiff is seeking the accounts and that too from the year 1983 of the partnership firm and such amendment is bound to change the nature of the suit.

5] However, considering that the Respondent/Plaintiff is claiming the said business to be out of the nucleus of the joint family property, then in such situation, as the present suit is for partition of the joint family property, the trial Court has rightly held that it does not change the nature of the suit and allowed the amendment application subject to costs of Rs.1,000/- to be given to the Defendant/Petitioner.

6] As a matter of fact, all the questions and disputes between the parties will be decided finally, if the proposed amendment is

allowed and it will also avoid the multiplicity of the proceedings. Hence, the discretion exercised by the trial Court in allowing such application for amendment need not be disturbed by this Court in writ jurisdiction.

7] The Writ Petition therefore being without merits, stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]