

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

WRIT PETITION NO. 6159 OF 2017

Mahaveer Annaso Mahajan	...	Petitioner
V/s.		
Ujwala Mahaveer Rajmane	...	Respondent

- Mr.Sandeep S. Koregave for the Petitioner.
- Mr.V.Y. Sanglikar for the Respondent.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 6th FEBRUARY, 2018.

P.C. :

1] Heard learned counsel for the Petitioner and the Respondent.

2] By this Writ Petition filed under Article 227 of the Constitution of India, the Petitioner is challenging the order dated 7th September 2016 passed by the Civil Judge Senior Division, Kolhapur, below Exhibit-140 in Special Civil Suit No.66 of 2010.

3] The Application at Exhibit-140 was filed by the Respondent, who is the Plaintiff before the trial Court for amendment of the plaint under Order-6 Rule-17 of the Code of Civil Procedure (*for*

short, "C.P.C.") and for addition of party under Order-1 Rule-10 of C.P.C.. The said Application was resisted by the Petitioner herein. However, the trial Court has, vide its impugned order, allowed the said application. Being aggrieved thereby this Writ Petition is preferred.

4] It is submitted that, after the evidence of the Plaintiff and his witness is recorded, this application for amendment in the plaint and for addition of the party is filed and therefore it is expressly barred by the Proviso to Order-6 Rule-17 of C.P.C..

5] However, in this respect, if the order passed by the trial Court is perused, it can be seen that the amendment has become necessary on account of the subsequent event and the subsequent event was that the Secretary of the Society has produced one document, which according to the Petitioner, is a false document and it is prepared in collusion with the Respondent-Defendant. Now the said document was produced after the commencement of the trial and after the recording of evidence. In view thereof, the amendment in plaint has become necessary to challenge the said document and also to bring certain facts on record. Therefore, as the amendment is sought, in order to bring on record the subsequent event, the bar of Proviso to Order-6 Rule-17 cannot come into play.

6] The second contention raised by learned counsel for the Petitioner is that in a suit for specific relief of the contract, except for vendor and vendee, no other third party is necessary to be joined. To substantiate this submission the learned counsel for the Petitioner, has relied upon the judgment of the Apex Court in the case of *Kasturi vs. Iyyamperumal*, 2005 DGLS(SC)398. However, in the present case, the presence of the third party has become essential in view of the subsequent document created by the Respondent showing that the suit plot is now standing in the name of one Kiran Appaso Mahajan and therefore, his presence has become necessary to decide the dispute between the parties finally, completely and effectively.

7] As a result, the impugned order passed by the trial Court allowing the amendment of the plaint and addition of the party, being just, legal and correct; is does not call for any interference.

8] Writ Petition, therefore, stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]