

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION No.10251 OF 2017**

Shri Jagannath Ramu Chougule

... Petitioner

Vs.

Shri Rajaram Shamrao Chougule

since deceased, through:

A) Sharad Rajaram Chougule & Ors.

... Respondents

Mr.P.D. Pise i/b Manjiri Parasnis for the Petitioner

Mr.R.A. Shelke for the Respondent Nos.1A to 1D

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: JULY 12, 2018

P.C. :

1. Upon urgent mentioning, taken on Production Board.
2. This petition is directed against the order dated 1.3.2017 passed by the learned 2nd Joint Civil Judge Junior Division, Sangli below exhibit 48 in R.C.S. No.10 of 2012. The plaintiff has filed the suit for simpliciter declaration. So, an objection was taken by the defendant that such relief cannot be asked and the suit is not maintainable.
3. The learned Judge accepted the contentions raised by the defendant i.e., the present petitioner, and passed the order on 20.2.2017. However, at the end of the order, he has also noted

down that the advocate for the plaintiff, at that time, during the course of dictation of the order, moved application for amendment of the plaint under Order 6 Rule 17 of the Civil Procedure Code and sought the relief of injunction, to be added. The trial Court has mentioned the said fact in the order and has refused to dismiss the suit on technical ground and kept that application at exhibit 48 which was preferred by the plaintiff for amendment of the plaint under Order 6 Rule 17 of the Civil Procedure Code. The said application was contested by the defendant, however, the learned Judge allowed the said application and directed the plaintiff to carry out amendments with costs.

4. The learned Counsel for the petitioner submits that the order passed by the learned Civil Judge Junior Division is illegal. The amendment is sought at a late stage when the plaintiff's cross-examination was over. He pointed out that the plaintiff has given admissions in the suit which are related to the relief of injunction which he has sought. The learned counsel has further submitted that the relief of injunction is not a consequential relief, as per section 34 of the Specific Relief Act and so it is to be refused.

5. The learned Counsel for the respondents supported the order of the learned trial Judge.

6. Heard submissions; perused the evidence; the proposed amendments and the impugned order passed by the trial Court. This suit is filed in respect of joint declaration that the common wall between the plaintiff and the defendant is owned jointly. It is true that the relief cannot stand in law and, therefore, as the plaintiff realised this fact, moved an application before the trial Court and the order of rejection was passed by the trial Court.

7. The said application was heard and has been rightly considered and allowed with a view to avoid multiplicity of proceedings as the issue was related to the same common wall. I am informed by the learned Counsel for the respondents that the respondent/original plaintiff, has carried out the amendments pursuant to the order and the cost is also deposited.

8. In the circumstances, the Writ Petition is dismissed.

(MRIDULA BHATKAR, J.)