

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

WRIT PETITION No.8796 OF 2017

Shri. Madhukar Dattatray DeshpandePetitioner

Versus

Rohini Pandharinath Deshpande & Ors.Respondents

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Mr. M.A.Utagikar for the Petitioner.
Mr.S.S. Raut for Respondent Nos. 1 to 6C.

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**CORAM: MRS.MRIDULA BHATKAR, J.
DATED: JUNE 28, 2018**

P.C. :

1. Upon urgent mentioning, taken on Production Board.
2. Rule. Rule made returnable forthwith. By consent of the parties, the Writ Petition is heard finally and disposed of at the stage of admission.
3. This Petition invoking the Writ Jurisdiction of this Court under Article 227 of the Constitution of India is filed wherein the order

dated 17th July, 2017 passed by the learned Civil Judge, Senior Division, Malshiras below exhibit 122 in Regular Civil Suit No. 154 of 2012 thereby rejecting the amendment in the written statement dated 4th March, 2017 is challenged.

4. Respondent nos. 1 to 6 (C), who are the original plaintiffs, have filed Regular Civil Suit No. 154 of 2012 for partition. The plaintiffs have filed affidavit of examination-in-chief. The cross-examination has been conducted by defendant no. 12 and thereafter, defendant no.1, who is the petitioner, preferred an application under Order 6 Rule 17 of the Code of Civil Procedure, 1908 for amendment of the written statement. The said application was opposed by the plaintiffs. After hearing both the parties, the learned Judge of the trial Court has held that no submissions/reasons are given to allow the amendment of the written statement and rejected the said application. Hence, this Writ Petition.

5. The learned Counsel for the petitioner has submitted that the proposed amendment is nothing but the elaboration of the contents, which were already raised by the defendant in the written

statement. He has further submitted that no prejudice will be caused to the plaintiffs, as their cross-examination is still pending.

6. The learned Counsel for the respondents opposed this Writ Petition. He has relied on the paragraphs of the written statement and has submitted that the contents in the proposed amendment are in fact mentioned in the written statement and, therefore, amendment is not required.

7. Perused the impugned order, written statement, application made under Order 6 Rule 17 of the C.P.C. and other documents. It appears that the plaintiffs have filed the suit for partition, which is challenged by defendant no.1 on the ground that the properties were already partitioned and the names of the parties were already mutated accordingly. After perusal of the written statement, it is found that the basic contentions are consistent with the proposed amendment. Moreover, in the case of **Vidyabai & Ors. vs Padmalatha & Anr** reported in **2009 (All MR 471)**, the Supreme Court has held that no amendment after commencement of the trial be allowed unless there is sufficient and cogent reason. The order dated 17th July, 2017 passed by the learned Civil Judge,

Senior Division, Malshiras cannot be faulted with. Hence, Writ
Petition is dismissed. Rule is charged.

(MRIDULA BHATKAR, J.)