

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 10845 OF 2019

VIRBHADRA KANTEPPA DHANURE
VERSUS
PRAKASH KANTEPPA DHANURE

...
Advocate for the Petitioner : Shri A. T. Kanawade h/f.
Shri P. P. Dama
...

CORAM : RAVINDRA V. GHUGE, J.

DATED : 19th NOVEMBER, 2019.

PER COURT :

1. The petitioner / original defendant in Regular Civil Suit No. 203/2017 is aggrieved by the order dated 23/01/2019 passed by the Trial Court, by which, application Exhibit 21 filed by the original plaintiff seeking amendment to the plaint, has been allowed by imposing costs.

2. The learned Advocate for the petitioner has strenuously criticized the impugned order and submits that the said order is legally unsustainable and deserves to be quashed and set aside. He relies upon the eight grounds formulated in the memo of the

petition and contends that the entire nature of the cause of action has been altered by the plaintiff vide the amendment.

3. I find that the suit preferred by the respondent plaintiff is for seeking perpetual injunction against the petitioner. Both are biological brothers. Considering the averments in the plaint, the petitioner filed the written statement and denied the mother's 'will-deed'. He denied that the plaintiff can be said to be the owner of the property. The ownership having been denied by the defendant, constrained the plaintiff to move an application for seeking a declaration of ownership. The plaintiff has denied the custody of the original "will-deed". The said amendment was actually a consequence of the stand taken by the defendant.

4. I do not find that the nature of the cause of action can be said to have been altered if the plaintiff is permitted to introduce the prayer of declaration and ownership over the same suit land which he claims to be in possession of and seeks an injunction against the

defendant. The impugned order does not appear to be perverse or erroneous.

5. Considering the above, the petition is dismissed.

6. However, in the event the petitioner defendant desires to file an additional written statement to counter the amended portion, he would be at liberty to make an application before the Trial Court for seeking such permission and the said application would be decided on its own merits.

(RAVINDRA V. GHUGE, J.)

shp/-