

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

29 WRIT PETITION NO.11157 OF 2019

UTTAM SURYABHAN THORAT
VERSUS
SURYABHAN HARI THORAT AND OTHERS

...
Advocate for Petitioner : Mr. Gore Ravindra Vitthal

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 9th SEPTEMBER, 2019.

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PER COURT :

1. The petitioner-original plaintiff in RCS No. 275 of 2016, is aggrieved by the order dated 16.04.2019 passed by the trial court thereby allowing the application Exhibit-38 filed by original defendant No.4 for amending the written statement, is allowed.

2. I have considered the strenuous submissions of the learned advocate for the petitioner and have gone through the 12 grounds formulated in the memo of the petition.

3. Defendant No.4 had moved application Exhibit-38 specifically contending that after the oral partition between the parties, certain properties were not indicated by the petitioner-plaintiff in the suit for partition, separate possession and

perpetual injunction. After defendant No.4 gathered this knowledge during the pendency of the suit and also from the evidence that was being recorded before the trial court, that he moved application Exhibit-38 before it became too late. The trial court has allowed the application by imposing costs of Rs.200/- after noticing that these details about the properties as well as certain ancestral properties in possession of the plaintiff, were not added in the common hotch-potch, deserve consideration.

4. The learned advocate for the petitioner has placed reliance upon the judgment of this Court in the matter of ***M/s Sai Shardha Developers Vs. Ravindra Ganpatrao Bharitkar and others, 2012 (6) Mh L J 348***, wherein this Court has concluded that due diligence under the proviso to Order VI Rule 17 of the C.P.C. has to be considered.

5. There can be no debate as regards due diligence under Order VI Rule 17 of the C.P.C. At the same time it cannot be ignored that this aspect has to be considered depending upon the facts and circumstances of each case. The trial court has recorded the specific features in the suit and has come to a conclusion that some properties were not placed in the common

hotch-potch by the plaintiff and defendant No.4 has gathered knowledge about the same subsequently.

6. The suit is of 2016 and therefore cannot be said to be a very old suit. I do not find any deliberate or inordinate delay having been caused by defendant No.4.

7. This petition, being devoid of merit, is therefore dismissed.

(RAVINDRA V. GHUGE, J.)

vsm/-