

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2959 OF 2018

Deepak Namdeo Marke .. Petitioner
VS
Smt Kajal Vasant Mange (Bhanushali) .. Respondent

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Mr.Dnyaneshwar J.Deshmukh for Petitioner
Mr.Rohan Sawant with Mr.Meet Vora
i/b M/s Navdeep Vora & Associates for Respondent

CORAM : NITIN W. SAMBRE, J
DATE : 11th OCTOBER, 2019

P.C

1. Regular Civil Suit No.28 of 2014 is initiated by the petitioner for a declaration and permanent injunction in relation to land survey No.10/7B. After the issues were framed, the Petitioner/Plaintiff moved an application seeking amendment at Exhibit 34 which is rejected by the impugned order dated 25.10.2017. As such, this petition.

2. The rejection is based on reason of change in the nature of the claim in the Suit. Appreciated the schedule which is attached to the application for amendment of the Plaint and also the resistance of the Respondent/Defendant. Amongst other plea raised in the Suit itself is not maintainable and there is failure on the part of the Petitioner to exercise due diligence.

3. Proposed amendment in my opinion, no way changes the nature of the claim in the suit, as the plea of the Petitioner/Plaintiff of adverse possession is sought to be diluted or deleted. A perusal of the amendment rather reflects that the proposed amendment is with intention to strengthen and amplify the existing pleadings.

4. That being so, the order impugned dated 25.10.2017 is not sustainable and is quashed and set aside.

5. Application Exhibit 34 stands allowed subject to costs of Rs.5000/- to be deposited before the Civil Court within a period four weeks. If paid, the Respondent/Plaintiff will be entitled to withdraw.

6. Needless to clarify the deposit of costs, will be condition precedent for carrying out amendment to the written statement. Needless to add that it shall be open for the Respondent/Defendant to indeed .. that the Suit is not maintainable in appropriate proceedings.

(NITIN W. SAMBRE J)