

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3195 OF 2018**

Lilabai Sopan Pawar

.. Petitioner

Versus

Uttam Moreshwar Kotwal and Ors.

.. Respondents

Mr. Girish R. Agrawal for the petitioner.

CORAM : K.K. TATED, J.

DATE : 22 JANUARY 2019.

P.C:-

. Heard learned Counsel for the petitioner.

2. By this writ petition under Article 227 of the Constitution of India, petitioner/original plaintiff is challenging the order dated 30.08.2017 passed by 2nd Joint Civil Judge, Junior Division, Sinnar below Exhibit 40 in Regular Civil Suit No.179 of 2007 rejecting petitioner's application for amendment of pleadings under Order 6 Rule 17 of Civil Procedure Code, 1908.

3. In the present proceedings, the petitioner/original plaintiff filed Regular Civil Suit No.179 of 2007 on 17.09.2007 restraining respondent/original defendant from disturbing his possession and or carrying out the construction over the suit property as described in paragraph 1 of the plaint. In that suit, the respondent/original defendant filed written statement on 27.09.2017 and denied the petitioner's possession over the suit property. They specifically made averments in the written

statement that though the sale deed was executed in favour of the petitioner, the possession was not handed over to him. Thereafter, the trial Court framed following issues on 20.07.2016

- “1. Whether plaintiff proves her ownership over the suit property?
2. Whether the plaintiff proves her possession over the suit property?
3. Whether plaintiff is entitled to relief of declaration as prayed?
4. Whether plaintiff is entitled for relief of perpetual injunction as prayed?
5. What order and decree?”

4. On the basis of the written statement filed by the defendant in 2007 and the issues framed by the trial Court on 27.07.2016, petitioner/original plaintiff filed application under Order 6 Rule 17 of Civil Procedure Code on 09.08.2017 for carrying out amendment in the plaint. By the said application, petitioner wanted to add certain paragraphs giving description of the revenue litigation and also the prayers for declaration that the defendant is not holding the possession of the property as a lawful owner. That application was rejected by the trial Court on the ground that trial began and there was delay on the part of the petitioner to file the application for carrying out amendment in the plaint. Hence, the present writ petition.

5. Learned Counsel appearing on behalf of petitioner submits that the trial Court erred in coming to the conclusion that

the petitioner has not made out any case for allowing their application. He submits that the trial Court totally wrong in observing that the nature of the suit will change. It is per-se contrary to the observation of the Apex Court and the Bombay High Court in catena of judgments. He submits that the petitioner has filed suit for injunction as soon as the respondent/original defendant claimed their possession over the suit property. The plaintiff made application for carrying out amendment and for declaration that defendant's possession has to be declared as unlawful. Therefore, there is no question of change of nature of the suit. He submits that trial Court ought to have allowed their application in the interest of Justice. He submits that in view of these facts this Hon'ble Court be pleased to set aside the impugned order dated 30.08.2017 and permit the petitioner/original plaintiff to carry out appropriate amendment in the plaint. He submits that if writ petition is not allowed, irreparable loss will cause to them.

6. I heard both the sides at length. Admittedly, in the present proceedings initially the petitioner has filed a suit only for injunction. In that suit, defendant filed their written statement on 27.09.2007 and denied the possession of the plaintiff. The defendant categorically made a statement that though the property was sold to the plaintiff, they never handed over possession to the plaintiff. They made a statement in the written statement that on the date of filing of the written statement, they were in possession of the suit property. On the basis of this statement, plaintiff filed application under Order 6 Rule 17 of Civil Procedure Code after 10 years i.e. on 09.08.2017. By that time, the trial Court started recording evidence of the plaintiff and also

of the defendants. Considering the fact that the trial has begun and there was delay on the part of the plaintiff to prefer an application for amendment from the date of knowledge, I do not find any reason to entertain the present writ petition.

7. Hence, writ petition stands rejected.

8. No order as to costs.

(K.K.TATED, J.)