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

WRIT PETITION NO. 1193 OF 2018

Laxman Narsappa Ankush

...Petitioner

VS.

Ramchandra @ Mhadappa Narsappa

Ankush & ors.

..Respondents

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Shri Venkatesh A. Shastry for petitioner.

Shri Amey Deshpande for respondent No.16.

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CORAM : M.S.KARNIK, J.

DATE : 28th AUGUST, 2019

P.C. :

Heard learned counsel for the petitioner.

2. The petitioner challenges an order dated 21/11/2017 passed by the trial Court partly rejecting the application for amendment. The trial Court was of the opinion that in so far as the relief for declaring that the sale deed executed by defendant Nos. 11 to 15 in favour of defendant No.16 (A) and (B) during the pendency of suit is not binding is concerned, the same cannot be granted unless appropriate Court

fees as per Section 6 (iv)(j) of the Bombay Court Fees Act is paid. It is the case of the petitioner that the only relief sought was that the sale deed is not binding on the petitioner and therefore appropriate Court fees as per Section 12 (d)(4) should be paid.

3. The trial Court rejected the application on the ground that appropriate Court fees having not been paid under Section 6(iv)(j) the application for amendment needs to be rejected.

4. Heard learned counsel for the respondents. Learned counsel supported the impugned order. He would submit that the trial Court has correctly rejected the application as appropriate Court fees are not paid though relief for declaring the sale deed as not binding on the petitioner is sought.

5. I have gone through the impugned order. The issues are yet to be framed. According to me, the trial Court should have allowed the application for amendment. In case the

defendants have any grievance about the valuation or payment of Court fees, he can always move an application under Order 7 Rule 11 of the Code of Civil Procedure after the Plaint is amended. Keeping this liberty of the defendants open, the application for amendment is allowed.

6. In case the respondents files an application under Order 7 Rule 11 the same shall be dealt with on its own merits without being influenced by the observations made in the impugned order.

7. The Petition is therefore allowed.

8. The impugned order to the extent that it rejects the application for amendment set aside. The application Exhibit 323 is allowed in its entirety.

9. Amendment to be carried out within a period of 2 weeks from today.

(M.S.KARNIK, J.)