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

WRIT PETITION NO.7074 OF 2019

Sujata Rajendra Wadhmare

...Petitioner

Versus

Sharadhandra Vishnu Phale

(S/o Shantabai V. Phale) and Ors.

...Respondents

Mr. J. S. Kalanke, for the Petitioner.

Mr. M. S. Lagu, for the Respondent No.2.

CORAM : REVATI MOHITE DERE, J.

DATE : 30th JANUARY, 2020

P.C. :

1. Heard learned Counsel for the parties.
2. By this petition, the petitioner has impugned the order dated 26th September, 2018, passed by the learned Ad-hoc Judge, City Civil Court, Greater Bombay, in Chamber Summons No.174 of 2018 in S.C. Suit No.481 of 2010, by which the learned Judge was pleased to reject the petitioner's chamber summons seeking amendment of the plaint.
3. Learned Counsel for the petitioner submits that the amendment is necessary in the light of what has come on record in the cross-examination of the defendant no.1. He submits that the petitioner (original

plaintiff no.2) by the said amendment is not bringing any new case on record, but only seeks to amend the prayer clause, by adding prayer clause 'f' in the suit i.e. for declaration that the petitioner (original plaintiff no.2) as daughter of the said deceased is entitled to her share, title and possession in the said flat premises bearing address 'J. L. Tambe Nagar, Prabhat Building, B/32, Sarojini Naidu Road, Mulund (W), Mumbai – 400 080. He submits that by the said amendment, no prejudice will be caused to the respondents/defendants. Learned Counsel relied on the Judgment of the High Court of Andhra Pradesh at Hyderabad, in the case of ***Chinnapareddy Subba Reddy v/s Chinnapareddy Srinu and Ors.***¹.

4. Learned Counsel for the Respondent No.2 (original Defendant No.2) opposes the petition and submits that no interference is warranted in the impugned order.

5. Perused the papers. The petitioner is the original plaintiff no.2, who has filed a suit as against the respondents/defendants for injunction, that the Defendants be restrained from disposing or interfering with the property standing in the name of the Deceased – Late Vishnu Kashinath Phale, 1) Kisan Vikas Patra (KVP), Monthly Income Scheme (MIS), Time

¹ Civil Revision Petition No.1773 of 2012, Decided on 01.11.2012

bound deposit (TD), Fixed Deposit (FD), Recurring deposit (RD) standing in the name of the ‘SAID DECEASED’ i.e. Late Vishnu Kashinath Phale and Late Smt. Shantabai Vishnu Phale and/or standing in the name of Late Vishnu Kashinath Phale and/or standing in the name of Late Smt. Shantabai Vishnu Phale and 2) “Flat Premises” standing in the name of Smt. Shantabai Vishnu Phale bearing address at J. L. Tambe Nagar, Prabhat Building, B/32, Sarojini Naidu Road, Mulund (W), Mumbai – 400 080, without following due process of law. The said suit was filed by the petitioner in 2010. The respondents/defendants appeared in the said suit and filed their written statement. The respondents/defendants in their written statement challenged the petitioner's status as an heir of the said deceased. The trial proceeded inasmuch as, the petitioner examined his witness and the respondents/defendants their witnesses. It appears that during the cross-examination of the Defendant no.1, Defendant no.1 stated that the petitioner did not have any rights in the suit property. The said cross-examination was done in the year 2011. In 2018, when the matter was posted for final arguments, the petitioner filed a chamber summons seeking amendment of the plaint, so as to incorporate the prayer mentioned in the schedule thereto. The said prayer reads thus:-

Schedule

Proposed Amendment:

Prayer “f” be added that

This Honourable court be pleased to declare that Plaintiff no. 2 as daughter of the Said deceased is entitled for said property and her share, title and possession in Said Flat Premises bearing address as J. L. Tambe Nagar, Prabhat Building, B/32, Sarojini Naidu Road, Mulund (W), Mumbai – 400 080.

6. The said chamber summons was resisted by the defendants by filing their reply on the premise that it was filed belatedly and that the petitioner’s earlier chamber summons filed in 2014 was dismissed on merits by the trial Court and this Court had not interfered in the said order. It was also averred in the said reply that there was no due diligence exercised by the plaintiff in applying for the amendment. Admittedly, the said chamber summons was filed in 2018 i.e. almost after seven years. The ground on which the said chamber summons was filed, was on the basis of what had come in the cross-examination of the Respondent No.1 i.e. original defendant no.1. A perusal of the chamber summons shows that there is no averment to show that despite due diligence, the said chamber summons could not be filed earlier. The affidavit-in-support of the chamber summons does not mention the same and is bereft of any details as to why the said chamber summons was filed belatedly, after almost seven years of learning of what had come in the cross-examination, which was conducted in 2011. The Judgment relied on by the learned counsel for the petitioner is clearly

distinguishable, inasmuch as, the amendment therein was permitted prior to the commencement of the trial. The Suit is at the final stage and is posted for arguments.

7. Having regard to what is stated aforesaid, no infirmity can be found in the impugned order.

8. The Petition is dismissed and accordingly disposed of.

REVATI MOHITE DERE, J.