

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5141 OF 2021**

Hasan Abdul Karim Shaikh .. Petitioner
Versus
Fatima Abdul Karim Shaikh .. Respondent

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Mr.Anvil S. Kalekar for the Petitioner.
Mr.Shrishail Sakhare for the Respondent.

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**CORAM: BHARATI DANGRE, J.
DATED : 17th NOVEMBER, 2021**

P.C:-

1. The petitioner is aggrieved by the impugned judgment and order dated 01/04/2021 passed by the learned 3rd Joint Civil Judge, Senior Division, Solapur, on an application below Exh.78 in Special Civil Suit No.17 of 2014, filed by the petitioner (original plaintiff), seeking amendment in his pleadings. The application, purportedly filed under Order 6 Rule 17 of the CPC, is rejected by the impugned order.

2. Heard the learned counsel for the petitioner and the learned counsel for the defendant.

3. The petitioner, who is the original plaintiff, has filed a suit for partition and separation of the suit properties by

impleading the defendants in the suit and the relief was sought in the backdrop of the pleadings that the properties are either purchased by his father from his own earnings or received from his forefather. When the defendant was being cross-examined, an application for amendment was preferred in the month of March 2021, seeking exhaustive amendment in the plaint.

On perusal of the application at Exh.E of the paper-book and when carefully read, it surfaces that the plaintiff has sought addition of parties, addition of properties and he also seeks bringing on record additional facts vide paragraph Nos.4, 5 and 6 of the amendment application.

The application pleads that in order to avoid the multiplicity of the proceedings, amendment should be allowed.

4. The parameters for allowing an amendment by virtue of Order 6 Rule 17 of the CPC are well settled and have been crystallised by the authoritative pronouncements of the Hon'ble Apex Court as well as of this Court, delivered from time to time. In case of *Revajeetu Builders and Developers v. Narayanaswamy & Sons & Ors.*¹, the Hon'ble Apex Court has culled down the principles to be taken into account while an application for amendment is to be allowed, by observing that the grant of amendment is a serious judicial exercise and the power cannot be exercised in a casual manner.

Though an amendment, which is necessary for effective adjudication of the proceedings cannot be denied, but a belated

¹ (2009) 10 SCC 84

amendment which would change the nature of the relief sought, cannot be entertained, particularly when the cause arising out of the amendment would lie beyond the period of limitation and in absence of establishing that the facts were not within the knowledge of the party and even by due diligence, it could not be brought before the court when the suit was instituted. In case of **M.Revanna vs Anjanamma (Dead) by LRs²**, the position of law has been reiterated to the effect that amendment of the pleadings, after commencement of trial, shall not be allowed except subject to the conditions stated in the proviso appended to Order 6 Rule 17, necessarily meaning that the due diligence will have to be demonstrated.

In absence of any attempt being made by the plaintiff to demonstrate the same, the learned Judge is perfectly justified in rejecting the application by recording that the plaintiff is seeking addition of parties, addition of properties and addition of facts and since he has failed to establish that the facts were not within his knowledge when the suit was instituted and since he has preferred to keep mum till the trial reached to the stage of its culmination, bar imposed by the proviso appended to Order 6 Rule 17 has been rightly invoked.

5. I find no legal infirmity in the impugned order. By upholding the order dated 01/04/2021, the writ petition is dismissed.

(**SMT. BHARATI DANGRE, J.**)

² 2019(4) SCC 332