

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8792 OF 2021**

Manoj Shivaji Sawant & Anr. .. Petitioners
Versus
Sambhaji Tayaram Sawant & Ors. .. Respondents

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Mr.Pradeep Thorat for the Petitioners.

Mr.Uzair Z. Kazi i/b YMK Legal for the Respondents.

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**CORAM: BHARATI DANGRE, J.
DATED : 09th DECEMBER, 2021**

P.C:-

1. Rule. Rule is made returnable forthwith.
2. Heard learned counsel appearing for the petitioners and the respondents.
3. The order under challenge is dated 02/09/2021, under which the application vide Exh.87, filed by the defendants to amend their written statement, came to be rejected by the learned Joint Civil Judge (Junior Division), Kolhapur.
4. Perusal of the impugned order would reveal that the amendment as sought for by invoking the power under Order 6

Rule 17 of the C.P.C. has been rejected on the ground that it is an attempt to delay the proceedings and since the amendment failed to satisfy the test of due diligence, as contemplated by the proviso appended to Order 6 Rule 17 of the C.P.C., it do not deserve consideration. Reliance is placed on the decision in case of *Vidyabai Vs. Padmalatha*¹

5. On perusal of the papers placed before me, it can be seen that the suit filed by the plaintiffs is for partition and separate possession in respect of the properties set out in para 1 of the plaint and enlisted as properties under caption 'A' and caption 'B'. In paragraph No.6, it is pleaded that the properties mentioned in the plaint are the joint properties and apart from these properties, there are several other joint properties, but it involve interest of other parties and, therefore, they are excluded from the purview of the suit otherwise, its trial would be time consuming and also the presence of said persons would be imperative in the suit.

Based on the aforesaid pleadings, share of 4/5 in respect of the properties mentioned in 1A and 1B is sought.

6. The aforesaid suit was filed in the year 2012 and, since, the defendants did not file their written statement within the period stipulated, 'No WS' order was passed. After period of two years, the said order was set aside and the written statement came to be filed and the issues were framed on 04/09/2019.

¹ LAWS (SC) 2008 12 15)

While the evidence affidavit of the plaintiffs was filed, application for amendment vide Exh.87 is taken out, which is strongly opposed on the ground of delay in bringing such an application and on the ground that due diligence is not adopted by the defendants, in seeking amendment to their written statement.

7. The proposed amendment, when carefully perused would reveal that by inserting paragraph 10A in the written statement, the defendants are specifically proposing to bring on record the constructions standing on property located at Sr.No.4 in the list of properties listed at 'A' and, since this was not included in the description of the property in the plaint, an amendment is sought. A legal plea is also sought to be canvassed to the effect that the partial partition of the suit properties is not maintainable. In proposed paragraph 10B, a legal objection in respect of the provisions of the Bombay Prevention of Fragmentation & Consolidation of Holding Act, 1947 is pleaded and the jurisdiction of the Court to try the suit is questioned.

8. On perusal of the original written statement and the proposed amendment, which is sought to be introduced in it, I do not see any prejudice being caused to the plaintiffs. The legal issues are, in any way, permitted to be canvassed at any stage of the proceedings and as far as the correction in one of the properties set out in Schedule A is concerned, it is a factual aspect which is sought to be pleaded, which can always be

traversed by the plaintiffs. Since, the cross-examination of the plaintiff, is yet to commence, I do not see any harm in allowing the amendment in the written statement, which has been declined under the impugned order.

Necessarily, the impugned order is set aside and the defendants are permitted to amend their written statement within a period of two weeks from today.

9. The suit is filed in the year 2012 and is pending since then. Upon completion of the pleadings, the learned Judge shall proceed with the cross-examination of the plaintiffs and make every endeavor to conclude the proceedings in Regular Civil Suit No.87 of 2012 within a period of six months. It is expected that both the parties shall render their co-operation to the learned Judge in its expeditious conclusion.

10. Rule is made absolute in the aforestated terms.

11. Needless to state that the observations made above are limited for adjudication of the issue involved in the writ petition and shall not be considered as a finding rendered on the merits of the case.

(SMT. BHARATI DANGRE, J.)