

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

WRIT PETITION NO. 12986 OF 2017

Suryakant @ Suresh Eknath Kamble & Anr. ...Petitioners
vs.
Naresh Eknath Kamble & Ors. ...Respondents

Mr.Prabhanjan Gujar for Petitioners.
Mr.Dhananjayrao Rananaware for Respondent Nos.1 to 4.

CORAM : BHARATI DANGRE, J.

DATED : 28 SEPTEMBER 2021

P.C. :

. Heard learned Counsel for the Petitioners and learned Counsel for the Respondents.

2. The challenge in this writ petition is to the order passed by Civil Judge, Junior Division, Vaduj on 1 September 2017 on an application filed by defendant no.1 seeking amendment in the written statement. The plaintiff resisted the application and on consideration of an important aspect that the amendment cannot be allowed that it does not fit in the parameters of Order 6 Rule 17, the same has been rejected.

3. The impugned order is carefully perused in the backdrop of the pleadings in the suit filed by plaintiff nos.1 to 4 claiming a decree of partition. The plaintiff had examined himself in the suit and even defendant no.1 was in the witness box and was cross-examined. After the cross-examination of defendant no.1, the application was taken out seeking

amendment of the written statement.

4. Order 6 Rule 17 undisputedly permit an amendment of pleadings at any stage of proceedings, but with a rider that all such amendments shall be made as may be necessary for the purpose of determining the real question of controversy between the parties. The proviso carves out an exception to allow the amendment of the pleadings after the trial has commenced unless the courts come to conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial, the amendment can be allowed.

5. When the application is perused, which seek amendment to the written statement, what the defendant is trying to bring on record is that the property has been purchased from the stridhan of his maternal grandmother and that the father had purchased the property by selling her ornaments and he also contributed from his own income when he purchased the property, Gat No.199. In any case, in a suit of partition, the said claim ought to have been set in the written statement and it is not necessary for determining the claim raised by the plaintiff in the plaint. Whatsoever, the defendant has not demonstrated before the court that inspite of due diligence, this fact could not have been brought before the court before the commencement of the trial. No pleadings are made to the effect demonstrating due diligence, nor any new documents have been said to have been unearthed when the application was made for amendment of the written statement.

The Apex Court in the **Baldev Singh vs. Manohar Singh**¹ has held that the courts should be liberal in granting the prayer for amendment in

¹ (2006) 6 SCC 498

the pleadings. However, this cannot be construed to mean overriding the provision in Order 6 Rule 17 and in the absence of necessary essentials of said Rule being pleaded and brought before the court, no illegality can be said to have occurred by the impugned order, which is passed within the framework of the code. Another reason for rejection of the writ petition is that the impugned order was passed on 1 September 2017 and there is no stay granted by this court, which may lead an inference that the suit has proceeded further and there is a possibility that the suit might have concluded on this date. This is an additional ground, which justify rejection of the writ petition.

6. The writ petition deserves to be rejected and is, accordingly, rejected.

(SMT. BHARATI DANGRE, J.)