

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**24 WRIT PETITION NO.5228 OF 2022**

**CHANGUJI RANGNATH GHODKE  
VERSUS  
KUSHAWARTA MUNJAJI JUMADE AND ANOTHER**

...  
Advocate for Petitioner : Mr. Nirmal Ramchandra J.

**CORAM : MANGESH S. PATIL, J.**

**DATE : 20.06.2022.**

**PER COURT :**

Heard learned advocate Mr. Nirmal for the petitioner.

2. The petitioner is aggrieved by the order passed by the lower appellate court, rejecting his application (Exh. 25) for amendment of his written statement under Order VI Rule 17 of the Code of Civil Procedure at the appellate stage.

3. By the proposed amendment, he intended to add a plea about having become owner by principle of adverse possession.

4. It was a suit for partition. The petitioner who was the defendant No. 2 before the trial court had come with a specific plea about the respondent/plaintiff having relinquished her share in the suit properties by accepting appropriate consideration. In tune with such stand even issue No. 2A was framed to the effect as to whether he proved such relinquishment.

5. Needless to state that such stand of the petitioner before the trial court would constitute his contention about being in possession of the suit properties on the basis of the relinquishment. It presupposes that he claims to be in permissive possession of the suit properties. Such a stand

clearly runs counter and is inconsistent with the proposed amendment whereby now he intends to establish about having become owner by adverse possession.

6. Once having participated at the hearing before the trial court with a specific stand of relinquishment by the respondent/plaintiff, allowing the petitioner to now improvise and come out with some inconsistent plea would certainly vex the issue apart from the fact that he cannot be allowed to alter the pleadings to take up some inconsistent stand with his original pleadings that too at the appellate stage. It is certain to cause a serious prejudice to the respondent/plaintiff.

7. Though not for these reasons, the lower appellate court has rejected the application and the aforementioned reasons clearly justify it.

8. The Writ Petition is dismissed *in limine*.

(MANGESH S. PATIL, J.)

mkd/-