

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**  
**WRIT PETITION NO. 11732 OF 2022**

Bhagwan Pandurang Pawar

....Petitioner

V/s.

Jagganath Pandurang Pawar

and Ors.

....Respondents

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**Ms. Sheetal K. Kohad**, Advocate for the petitioner.

**Mr. Abhishek Nandimath i/by Mr. Umesh Mankapure**,

Advocate for the respondent no.1.

**CORAM : SANDEEP K. SHINDE, J.**

**TUESDAY, 6TH OCTOBER, 2022.**

**P.C. :**

This Petition under Article 227 of the Constitution of India takes exception to the order dated 17<sup>th</sup> February, 2022 by which plaintiff/respondent no.1, was allowed to amend the plaint, after commencement of trial. The respondents instituted Regular Civil Suit No.54 of 2009 for partition, possession and injunction. In January, 2014, the plaintiff was permitted to amend his plaint for impleading the respondent nos.5 to 7, being parties necessary in suit for partition. On 1<sup>st</sup>

April, 2021, the plaintiff was cross-examined wherein he admitted that Fulabai and Malabai had relinquished their shares in the Suit Land. Thereafter, on 8<sup>th</sup> February, 2021, plaintiff moved an application under Order 6 Rule 17 of the Code of Civil Procedure, 1908 to amend the plaint. By this amendment, the plaintiff quantified the share of the defendants, Malabai (Defendant No.5) and Fulabai (Defendant No.4). According to the Plaintiff, amendment sought, does not change the character of the suit and, therefore, would cause no prejudice to the defendants. The learned Court allowed the amendment subject to cost of Rs.1,000/-. This order is challenged herein.

2. Indisputably, plaintiff sought leave to amend the plaint after commencement of trial. In terms of proviso to Order 6 Rule 17 of the Code of Civil Procedure, 1908, the Court's jurisdiction in allowing application to amend the pleadings is taken away, unless condition precedent, therefor, are satisfied, i.e, it must come to conclusion that in spite, of due diligence parties could not have raised the matter before commencement of trial. The settled law is, if an application for amendment of pleadings filed after commencement of trial, besides jurisdictional fact of necessity to determine real question of controversy between the parties, one more jurisdictional fact to be established, which is exercise of due diligence.

3. In the case at hand, the plaintiff in his cross-examination admitted that Fulabai (Defendant No.4) and Malabai (Defendant No.5) relinquished their share in the Suit Property. But, soon thereafter, within seven days, he moved an application to amend the plaint seeking to quantify share of the defendants. This may lead to and cause withdrawal of admissions made by the plaintiff in cross-examination. Therefore, granting the amendment would certainly result in injustice to Petitioners. Even otherwise, application seeking amendment is silent on the aspect of, 'due diligence' which plaintiff was required to establish. For these reasons, impugned order is quashed and set aside. The Petition is allowed in aforesaid terms and disposed of accordingly.

**(SANDEEP K. SHINDE, J.)**