

VAISHALI
ANIL
TIKAM

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

WRIT PETITION NO. 3124 OF 2019

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Shri Charudatta Ramakant SadawartePetitioner

V/s.

Dr. Sanjay Ramakant SadawarteRespondent

Mr. Shantanu Chandratre, Advocate for the Petitioner

Mr. Shriram S. Kulkarni, Advocate for the respondent.

CORAM : SANDEEP K. SHINDE, J.

WEDNESDAY, 12TH OCTOBER, 2022.

P.C. :

1. Petitioner is the Defendant in Regular Civil Suit No. 394 of 2007. Respondent-Plaintiff, instituted the said suit seeking following reliefs; (i) declare that Will executed by Ramakant Laxman Sadavarte and Usha Ramakant Sadavarte, on 5th June, 1996 and 2nd September, 1996 respectively, be cancelled, and declare that Petitioner - Defendant No.1, has no right to obstruct or disturb the Plaintiff's possession in the suit house, described in paragraph 1 of the plaint; (ii) by mandatory

order, Petitioner- Defendant No.1 be directed to open the lock put on the suit house.

Parties to the suit, led evidence. While Defendant, was cross-examined, the Plaintiff filed an application, seeking leave to amend the plaint. By proposed amendment, the Plaintiff sought to;

- (i) add a new property, described in paragraph 1(b) of the application as suit property;
- (ii) implead Shri Sushil Balasaheb Sadavarte, his uncle and Shri Abhay Ramakant Sadavarte, his brother, as Defendant Nos. 2 and 3 respectively;
- (iii) partition of the suit property and decree to carve out his 1/3rd share therein, by appointing the Court Commissioner.
- (iv) decree to injunct the Defendant from creating the third party right in the suit property.

2. Learned Trial Court vide order dated 7th January, 2019, allowed the amendment, subject to cost of Rs.5,000/-.

Feeling aggrieved by that order,, in supervisory jurisdiction of this Court is invoked.

3. Heard learned counsel for the Petitioner.

4. In context of the original pleadings, amendment sought would fundamentally change the character of the suit, reason being, the suit was filed for declaration however, amendment, seeks to convert, it into suit for partition. Moreover, since amendment is sought after commencement of the trial, proviso to Order 6 rule 17 of CPC prevents an application for amendment of pleadings, unless the court come to conclusion that, in spite of due diligence, the party could not have raised the matter before the commencement of the trial. Admittedly, application moved, does not disclose the exercise of 'due diligence'. Neither the Trial Court adverted to the proviso to Order 6 Rule 17 of CPC, nor the nature of the amendment sought

5. For all these reasons, the impugned order calls for interference. Accordingly, it is quashed and set aside.

6. Mr. Kulkarni, learned counsel for the Respondent - Original Plaintiff, on instructions submits that Plaintiff may be granted leave to institute another suit for. In my view, leave of this Court is not required and, therefore, request is rejected.

7. With these observations, the petition is allowed and disposed of in the aforesaid terms.

(SANDEEP K. SHINDE, J.)