

ISM

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 5387 OF 2022

DATTU TUKARAM CHAVAN DECD THRU LHRSPETITIONERS
AND ORS

V/s.

PANDURANG RAJARAM CHAVANRESPONDENT

Mr. Sachin S. Gite Advocate for the Petitioner
Mr. Amey Deshpande Advocate for Respondent

CORAM : NITIN W. SAMBRE, J.

DATE: MAY 4, 2022.

P.C.:

- 1) Petitioner initiated R.C.S. No. 139/2009 seeking partition of the Suit property or in alternate declaration that by way of adverse possession, Petitioner-Plaintiff has acquired title to the Suit property.
- 2) At the fag end of the trial i.e. the Suit is fixed for final arguments, Application Exh. 153 is taken out for amendment so as to withdraw the plea that Plaintiff is owner of the Suit property. Such prayer is rejected vide impugned order.

3) Mr. Gite, counsel for the Petitioner would urge that it is always open for the Petitioner who is master of the Suit to elect either of the prayers in the Plaint and that being so, his prayer that he does not want to press the relief based on pleadings i.e. of being owner of the Suit property ought to have been permitted to be deleted.

4) He would further claim that if the relief was granted, it will not cause any prejudice to either side.

5) Counsel for Respondent would support the order impugned.

6) With the assistance, I have perused the order impugned. Trial Court was of the opinion that relief of amendment as is prayed thereby deleting part claim in the Suit cannot be granted as such prayer is not substantiated by any convincing grounds or reasons. Apart from above, Court was of the view that since Suit is already fixed for arguments, it will be improper to grant such prayer.

7) This Court is in agreement with the reasoning and the conclusion drawn by the Trial Court. Apart from above, it can be viewed from the conduct of the Petitioner that he intends to withdraw certain admissions or pleadings which the Defendant consider to be admission in his favour. Fact remains that Petitioner has not satisfied

the test of due diligence.

8) That being so, no case for interference is made out. Petition stands rejected.

[NITIN W. SAMBRE, J.]