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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 8437 OF 2016

**SHRI GANESH LAXMAN PATHWARDHANPETITIONERS
AND ORS**

V/s.

BIBI ABBAS MULANIRESPONDENT

**Mr. Kalpesh U. Patil for the petitioners
Mr. Dilip B. Shinde for respondent**

CORAM : NITIN W. SAMBRE, J.

DATE: JANUARY 3, 2022.

P.C.:

1] In a Suit for specific performance, prayer for amendment came to be rejected on the ground that amendment in the nature of partition and rectification of the agreement of sale will change the nature of relief sought.

2] After having hearing respective counsel for some time, in my opinion, such relief can be claimed in a Suit for specific performance

at pre-trial stage and in case if prayer for amendment is granted, respondent-defendant will get an appropriate opportunity to defend such claim on merit.

3] As the nature of claim sought to be inserted by virtue of amendment is with an intention to avoid multiplicity of litigation, in my opinion, order impugned dated 22/01/2016 passed below Exh. 27 in R.C.S. No. 453 of 2012 needs to be set aside and is accordingly set aside. Application Exhibit 27 stands allowed subject to payment of cost of Rs. 10,000/- to be deposited in the court below within period of 4 weeks from today to which respondent-defendant shall be entitled to withdraw.

4] Petition stands allowed in the above terms. Amendment to be carried within one week from the date of deposit of the amount as ordered herein above. Needless to clarify that this court has not examined merits of the claim put forth by way of amendment.

[NITIN W. SAMBRE, J.]