

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

WRIT PETITION 13107 OF 2019

Ishwar Bajirav Thorve ... Petitioner

V/s.

Ravindra Bapu alias Balu ... Respondents
Sarvade & Ors.

Mr. Rohit S. Gangawane for the Petitioner.
Mr. Dilip A. Nikalje for the Respondents.

CORAM : ROHIT B. DEO, J.

DATE : 22nd JUNE 2022

P.C.

1. The petitioner is the plaintiff in Regular Civil Suit 479 of 2016 who is aggrieved by the order dated 14.03.2019 whereby the learned Trial Court rejected the application 'Exh.77' preferred by the plaintiff seeking amendment of the plaint.

2. The suit is filed seeking decree of possession and perpetual injunction. After the commencement of the trial, the plaintiff preferred an application under Order VI Rule 17

of the Civil Procedure Code, 1908 (Code). The plaintiff sought to incorporate the plea that in addition to the land, the suit property comprises two rooms which are constructed. The plaintiff further sought to incorporate a prayer for rectification of the Sale Deed dated 20.09.2013 and to include two constructed rooms in the description of the suit property. Presumably, the apprehension of the plaintiff was that in the absence of specific relief as regards the two constructed rooms, the suit may not be decreed.

3. The Trial Judge was pleased to reject the application observing that there is no attempt made to establish that even with due diligence, the matter could not have been brought before the Court before the commencement of the trial. The learned Trial Judge noted that the evidence of the plaintiff is over. As a fact even the evidence of the defendants is over and the suit is fixed for final hearing. It is in this view of the matter the Trial Court did not permit the plaintiff to incorporate the factual plea of existence of two rooms and the relief of rectification of the Sale Deed.

4. I see no reason to disagree with the learned Trial Judge who has observed that there is no attempt made whatsoever to establish that even by exercising due diligence, the issue could not have been raised before the commencement of the trial. In any event, if the plaintiff succeeds on the basis of the Sale Deed, the fact that the two rooms are not described in the Sale Deed may not be of much significance.

5. I see no reason to interfere with the order impugned in exercise of writ jurisdiction.

6. The writ petition is dismissed.

(ROHIT B. DEO, J.)