

SA Pathan

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

WRIT PETITION NO.14274 OF 2023

Ganpatrao Shankarrao Khot (Deceased)

Through Legal Heirs

... Petitioners

V/s.

Balasaheb Shankarrao Khot

... Respondent

SHABNOOR
AYUB
PATHAN
Digitally signed by
SHABNOOR AYUB
PATHAN
Date: 2023.12.02
10:31:03 +0530

Mr. Aditya S. Raktade a/w Mr. Dnyanesh Patil, for
Petitioners.

Mr. Kuldeep U. Nikam, for Respondent.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 1, 2023

P.C.:

1. The defendant in a suit for declaration of ownership and declaration of invalidity of Will, filed an application for amendment to incorporate the prayer for possession of suit property and further relief of mesne profit is sought by proposed amendment.

2. It is undisputed that the application for amendment is filed prior to commencement of trial; therefore, proviso to Order 6, Rule 17 of the Code of Civil Procedure, 1908 has no application. Once, it is shown that the application for amendment is filed prior to commencement of trial, all amendments need to be allowed unless the amendment is inconsistent or withdraws admission or

introduces new cause of action. The relief of possession and mesne profit sought by the plaintiff is in furtherance of relief of declaration of title already prayed in the suit. Therefore, the amendment will not change the nature of the suit. The Trial Court has rightly allowed the application for amendment.

3. The writ petition is dismissed. No costs.

(AMIT BORKAR, J.)