

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 622 OF 2016

Maruti Dattu Kumbhar & Ors.

...Petitioners.

Versus

Balu Alias Balwant Appana Salavi
(Kumbhar) & Ors.

..Respondents.

Mr. Kush M. Lahankar i/b Mr. S.R. Ganbavale for the petitioner.

Coram : Sharmila U. Deshmukh, J.

Date : July 6, 2023.

P. C. :

1. Heard.

2. The challenge in the petition is to the order dated 20th November 2015 rejecting the petitioner's application for amendment of plaint. Without adverting to the facts of the case, the petition can be dismissed for the reason that the application for amendment came to be filed after the issues were framed and the suit is fixed for the evidence of plaintiff. Perusal of the impugned order discloses that the application for amendment came to be rejected on two grounds; firstly, that by the proposed amendment, the petitioner sought to amend the prayer clause and seek to incorporate the reliefs of

declaration and ownership of the property whereas the original suit was simplicitor for injunction and; secondly, that the amendment sought being post-trial amendment, the petitioner has not stated as to how despite due diligence, he could not raise the matter before the commencement of trial. It is not disputed that the proposed amendment is a post-trial amendment.

3. After the 2002 Amendment of CPC, proviso is incorporated in Order-6 Rule-17 of CPC, which is couched in a mandatory form. After the amendment of CPC, the court does not have power to permit the parties to amend the pleadings after the trial has commenced without the requirements of proviso to Order-6 Rule-17 being complied with, namely, a specific case being put forward that how in spite of due diligence, the matter could not have been raised.

4. In the present case, upon perusal of the application for amendment, I find that only a statement is made that the document dated 1st April 1935 showing the ownership in respect of the suit property came to the knowledge of petitioner. There is no averment as to why in spite of due diligence, the said document could not have been discovered earlier.

5. In view of the above, the writ petition is devoid of any merits and the same stands dismissed.

[Sharmila U. Deshmukh, J.]