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

**WRIT PETITION NO.7267 OF 2022**

Pradip Manohar Khole & Anr.

... Petitioners

**V/s.**

Pravin Ramchandra Thakar,  
deceased through LRs & Ors.

... Respondents

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Mr. Chaitanya Nikte with Mr. Prajit S. Sahane and Mr.  
Ritvij Kale for the petitioners.

Mr. Hitesh B. Sangle for respondent No.1B.

**CORAM : AMIT BORKAR, J.**

**DATED : DECEMBER 12, 2023**

**PC.:**

- 1.** The petitioner is challenging order passed by the Trial Court allowing amendment of plaint at the stage of arguments.
- 2.** Respondent No.1/original plaintiff filed Special Civil Suit No.898 of 2012 seeking cancellation of sale deed dated 6 July 2012 executed by respondent Nos.2 to 9 in favour of the petitioners, i.e. original defendant Nos.9 and 10. Further relief of permanent injunction against the petitioners not to disturb possession of the plaintiff is sought.
- 3.** The parties filed their written statement. Plaintiff filed affidavit of evidence on 22 August 2017. Therefore, there was commencement of trial.
- 4.** On 2 April 2019 after completion of oral evidence, the Trial Court fixed the suit for final arguments. On 12 April 2019 parties

concluded their final arguments. However, on 12 April 2019 plaintiff filed an application for amendment of plaint to add relief of setting aside sale deed in favour of the petitioners on the ground of right of preemption. The Trial Court allowed the amendment on the ground that such relief was initially prayed in the plaint. However, the relief was scored out. The plaintiff did not sign the modified portion of the plaint. Therefore, the Trial Court held that such abandonment of prayer cannot be treated as giving up of claim by consent of the plaintiff.

**5.** Having heard advocates for the parties, it needs to be stated that the parameters for exercise of power under Order 6 Rule 17 of the Code of Civil Procedure, 1908 after amendment of 2002 require the Court to first record a finding regarding exercise of due diligence. In absence of recording such a finding regarding due diligence, the Court has no power to allow the amendment (see **Vidyabai v. Padmalatha**, (2009) 2 SCC 409; **Pandit Malhari Mahale v. Monika Pandit Mahale & Ors.**, (2020) 11 SCC 549).

**6.** In the facts of the present case, it is not in dispute that parties concluded their final arguments and the plaintiff filed an application after conclusion of arguments seeking permission to incorporate prayer of setting aside sale deed on the ground of preemption. The reason assigned by the plaintiff in the application for amendment is that advocate appearing for the plaintiff at the relevant time without authority scored out relief of preemption. In this context, it needs to be noted that the suit was initially filed through the advocate for the plaintiff. On the date civil suit was

filed, the plaintiff had signed the plaint. The deletion of prayer is an amendment carried out by the advocate for the plaintiff. It is common knowledge that in the Trial Court amendment is physically carried out by the advocate and not by the parties to the suit. Therefore, now the legal representatives of the plaintiff cannot disown the act of the advocate for the plaintiff. If the advocate carried out such amendment without authority of the plaintiff, remedy of the legal representatives of the plaintiffs is somewhere else and not to seek amendment of the plaint.

7. Apart from the said fact, in my opinion, such reason blaming advocate for scoring out the prayer and proceeding with the suit till conclusion of arguments dis-entitles the plaintiff from seeking amendment of the plaint. Therefore, the Trial Court committed error of jurisdiction by allowing the amendment after conclusion of arguments without recording finding of due diligence. The impugned order, therefore, cannot be sustained. Hence, following order:

- a) The impugned order dated 17 April 2019 passed by the Civil Judge Senior Division, Pune in Special Civil Suit No.898 of 2023 is quashed and set aside;
- b) Application below Exhibit 97 in Special Civil Suit No.898 of 2023 is rejected.

8. The writ petition stands disposed of in above terms. No costs.

**(AMIT BORKAR, J.)**