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

WRIT PETITION NO.9538 OF 2018

Shantaram Goma Patil ... Petitioner
V/s.
Bebybai Dattaram Sardal & Ors. ... Respondents

Mr. Rajesh S Datar, for the Petitioner.

Mr. Hanmant G. Wakshe, for Respondent Nos.1 to 3.

Mr. Tejas Dande, for Respondent Nos.5 to 6.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 28, 2023

P.C.:

1. By the impugned order, the Trial Court rejected the application for amendment under Order 6, Rule 17 of the Code of Civil Procedure, 1908 in a suit for specific performance declaration and injunction.
2. The petitioner is original plaintiff who has filed the said suit in relation to property No.255.
3. According to the plaintiff, defendant Nos.1 & 2 were the owner of the suit property. The Municipal Corporation had allotted No.85 to the suit property. Based on alleged agreement stated in the suit, the petitioner sought relief of declaration that the agreement between the plaintiff, defendant Nos.1 & 2 and deceased (Mangibai) in respect of suit property is binding upon

defendant Nos.1 to 3. Therefore, plaintiff seeks for declaration along with other reliefs that he has become owner of the suit property.

4. Before commencement of trial, the petitioner filed an application, for amendment of plaint to incorporate prayer of delivery of possession as it is alleged that the suit property was demolished by the office of the Municipal Corporation on 17 February 2016. The petitioner is also sought the additional relief for injunction restraining defendant Nos.4 and 5 from alienating suit property.

5. The Trial Court rejected the application for amendment based on following reasons:

- i) There is no evidence to indicate that the demolition of property by defendants;
- ii) It changes nature of the suit;
- iii) The reliefs sought, are based on vague pleadings;
- iv) The event alleged in the amendment application cannot be said to have taken place after filing of the suit.

6. On perusal of the amendment application and the impugned order, in my opinion, the Trial Court ought to have allowed the amendment to avoid multiplicity of the proceedings. It cannot be disputed that the petitioner could have filed fresh suit seeking same relief against the defendants in relation to the same property. If that be so, to avoid multiplicity of proceedings, the Trial Court ought to have allowed the application. It needs to be hold that the

amendment application has been filed before the commencement of trial. Whether the event of demolition of suit property occurred or not, is a issue which needs to be decided during trial. However, such amendment application cannot be rejected for want of evidence. Merits of amendment application cannot be gone into at this stage, therefore, pass following order:

a) The impugned order passed by the Trial Court on 23 April 2018 in RCS No.189 of 2014 below Exhibit 27 is quashed and set aside.

b) The application below RCS No.189 of 2014 is allowed.

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

(AMIT BORKAR, J.)