

Nikita

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

WRIT PETITION NO.10649 OF 2023

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Krishna Laxman Magar Thr. Constituted
Attorney ... Petitioner

V/s.

Dnyaneshwar Laxman Magar and Anr. ... Respondents

Mr. Sanjiv Sawant a/w Mr. Abhishek Matkar a/w
Malhar Bageshwar i/b Mr. Abhishek S. Matkar, for the
Petitioner

Mr. Hemant Ghadigankar for the Respondent.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 1, 2023

P.C.:

1. By the impugned order Trial Court had rejected the application for amendment of Order 6 Rule 17. The application for amendment of contrary, rejected application for amendment of written statement to the counter claim filed by the defendant.
2. The petitioner is original plaintiff, who has filed suit for confirmation of the partition. In the said suit, the defendant has filed counter claim by the application dated 20th June 2023, the plaintiff sought to amend the written statement to the counter claim raising pleading in paragraph No.3.
3. The Trial Court rejected the application assigning two reasons.

a) The claim in the proposed written statement is contrary to the stand in the plaint.

b) The stage of the suit is of final hearing and therefore, application cannot be entertained.

4. Considering the reasons assigned in the impugned order, no fault can be found with the impugned order, however, it shall be open for the parties to raise pure question of law at the time of final hearing of the suit.

5. The trial Court shall decide the suit uninfluenced by the observations made in the impugned order.

6. If the parties raise pure question of law, the Trial Court shall consider such pure question of law even at the stage of final hearing.

7. The writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)