

Nikita

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12195 OF 2023

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Shivdas Bhagwandas Bhandari since
Deceased Thr. His Heirs ... Petitioner
V/s.
Surajmal Shrikishan Bhandari and Ors. ... Respondents

Mr. Narayan R. Bubna for the Petitioner.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 5, 2023

P.C.:

1. The plaintiff is challenging order of rejection of amendment to incorporate relief of partition and separate possession.
2. On perusal of the application for amendment, it appears that there is no pleading of due diligence as required under the proviso of Order 6 Rule 17. It is undisputed that the stage of suit on the date of filing of the application for amendment is that the plaintiff has filed his affidavit of evidence. This shows that on the date of filing of the amendment trial had already commenced. In this situation, proviso to Order 6 Rule 17 gets attracted. The Apex Court in the case of **Vidyabai & Ors. v. Padmalatha & Anr.** reported in (2009) 2 SCC 409, has held that pleadings of due diligence as due jurisdictional fact and in absence of recording such satisfaction, interference in the order of rejecting application for

amendment is uncalled for.

3. The writ petition is, therefore, dismissed.

4. All questions on merits raised by the petitioner are kept open.

(AMIT BORKAR, J.)