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

WRIT PETITION NO.1180 OF 2020

Girgu Moru Alias Keru Jagtap,
through heirs & legal representatives
Smt. Sumant Jaywant Shinde

... Petitioner

V/s.

Baliba Kesu Jagtap, through
heirs and legal representatives
Atmaram Baliba Jagtap

... Respondent

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Mr. B.A. Lawate for the petitioner.

Mr. Abhijit P. Kulkarni with Mr. Gaurav Shahane and
Mr. Krushna Jaybhay for respondent Nos.1A, 1B(I) &
1B(II)

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 4, 2023

PC.:

1. By this writ petition under Article 227 of the Constitution of India, the petitioner/original defendant is challenging order dated 9 September 2019 passed by 4th Joint Civil Judge Junior Division, Baramati in Regular Civil Suit No.47 of 2017 allowing amendment of plaint.

2. The respondent/original plaintiff filed a suit for injunction restraining defendant from disturbing his lawful possession over the suit property. According to the plaintiff, the plaintiff is in lawful possession of the property from 1956 till filing of the suit, i.e., 24 January 2017.

3. In the said suit, the respondent filed an application claiming relief of ownership based on the plea of adverse possession. The Trial Court allowed the application on the ground that the evidence of the plaintiff is yet to be believed.

4. However, it appears that the original plea in the suit is based on lawful possession over the suit property. If the plaintiff claims lawful possession over the suit property till filing of the suit, he will be precluded from raising contradictory plea of adverse possession which requires the plaintiff to admit ownership of the defendant. In the facts of the case, allowing such amendment would amount to permitting a party to raise contradictory plea in the plaint. Therefore, the Trial Court could not have allowed the amendment. Hence, following order:

- a) Impugned order dated 9 September 2019 passed by 4th Joint Civil Judge Junior Division, Baramati below Exhibit 25 in Regular Civil Suit No.47 of 2017 is quashed and set aside;
- b) Application below Exhibit 25 in Regular Civil Suit No.47 of 2017 is rejected.

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

(AMIT BORKAR, J.)