

Anand

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

WRIT PETITION NO. 2470 OF 2019

**ANAND
SUDHAKAR
SUDAME**

Smt. Pushpabai Ramchandra Mhatre & anr. .Petitioners

Vs.

Smt. Chandrabai Ramchandrabai Mhatre & ors. .Respondents

Mr. Amey C. Sawant, Advocate, for the Petitioners

Mr. Ajay S. Patil, Advocate, for Respondent No. 2

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 24.7.2023

P. C.

. The challenge in the Petition is to the order dated 18.09.2018 allowing the Respondents' Application seeking amendment of the plaint after the evidence has commenced.

2. Learned counsel for the Petitioners submits that the application for amendment of the plaint was filed on 14.06.2018 and that the same amounts to post trial amendment and as such, proviso to Order VI, Rule 17 of the Code of Civil Procedure, 1908 (for short 'CPC') comes into play. He would contend that the perusal of the Application for amendment of the plaint would indicate that the Plaintiffs had knowledge of the revenue entries on 27.07.2010 and the Application is completely silent as to why

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there is a delay of eight years in preferring the Application. He would further submit that the Application does not state that as to why inspite of due diligence, the matter could not have been raised prior to the commencement of the trial.

3. Per contra, learned counsel appearing for Respondent No. 2 submits that after the amendment was allowed, the plaint was duly amended and the matter has proceeded further. He would further contend that the matter is fixed for final arguments on 22.08.2023 and as such, no interference under Article 227 of the Constitution of India is warranted.

4. Considered the submissions.

5. The suit in question is of the year 2006 and the issues came to be framed on 19.06.2009. Affidavit of evidence was filed on 01.12.2011 and the application for amendment has been filed on 14.06.2018. This Court could have been inclined to consider submissions of the Petitioners but for the fact that the Petitioners have not taken steps in respect of the Petition which has been filed in the year 2018. There was no stay to the proceedings before the trial Court and as such, the trial Court has proceeded

to the hearing of the matter and has scheduled the matter for arguments on 22.08.2023.

6. Considering that the proceedings are of the year 2006, the order in question was already implemented and is at the stage of final arguments, this Court under Article 227 of the Constitution of India is not inclined to set the clock back and relegate the matter to the stage of filing of the evidence. Considering the provisions of Section 105 of the CPC which provides that where a decree is appealed from, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal and the fact that suit is of the year 2006 and is at the stage of final adjudication, I am not inclined to interfere with the order allowing amendment of the plaint.

7. The Petition, being devoid of merits stands dismissed.

(SHARMILA U. DESHMUKH, J.)