

VRJ

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

WRIT PETITION NO.6944 OF 2018

VAIBHAV
RAMESH
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Date: 2023.12.20
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Tajuddin Babu Jaina

... Petitioner

V/s.

Khatunbi Khudbuddin Jaina & Ors.

... Respondents

Mr. Sumedh S. Modak i/by Mr. Vijay Killedar for the
petitioner.

Mr. Prajakt Arjunwadkar for respondent Nos.1 to 5.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 19, 2023

P.C.:

1. The petitioner is plaintiff in a suit for partition and separate possession.
2. Before commencement of trial, the petitioner filed an application to incorporate pleadings regarding transfer of part of suit property in favour of third parties. The Trial Court rejected the application on the ground of delay. The petitioner takes exception to the said order by way of present petition.
3. On perusal of the plaint and the application for amendment, it appears that the application is filed before commencement of trial. Therefore, proviso to Order 6 Rule 17 of the Civil Procedure Code, 1908 is not attracted. If that be so, the Trial Court was not

justified in rejecting application on the ground of delay. However, considering the averments made in the proposed amendment, it is made clear that the amendment shall be subject to limitation.

4. With the above clarification, the impugned order dated 10th August 2017 passed by the Joint Civil Judge Junior Division, Kurandwad in Regular Civil Suit No.320 of 2012 below Exhibit-60 is set aside.

5. The application below Exhibit-60 in Regular Civil Suit No.320 of 2012 is allowed subject to law of limitation.

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

(AMIT BORKAR, J.)