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

WRIT PETITION NO. 15265 OF 2023

Baban Sudam Bhilare and Ors.

.. Petitioners

Versus

Kusum Sahebrao Navale and Ors.

.. Respondents

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- Mr. Krushna Jaybhay a/w. Mr. Gourav Shahane, Advocates for Petitioners.

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 02, 2024.

P.C.:

- 1.** Mentioned at the time of rising of the Court.
- 2.** Heard Mr. Jaybhay, learned Advocate for Petitioners.
- 3.** Suit is filed in the year 2008 being Regular Civil Suit No.418 of 2008 for declaration and injunction by the Plaintiff. Application seeking amendment under Order VI Rule 17 of the Code of Civil Procedure, 1908 is preferred in the year 2023 below Exhibit “143”. It is contended by the Plaintiff that by virtue of the amendment, Plaintiff desires to now implead an adjacent owner of the Suit property who has during the interregnum and pendency of the Suit proceedings encroached upon the Suit property. It is contended that since encroachment has happened on the Suit property, in order to avoid multiplicity and multifarious Suit proceedings with respect to the same Suit proceedings, the amendment should be allowed.

4. The learned Trial Court has after considering the Application, by the impugned order dated 05.06.2023 rejected the Application.

5. The learned Trial Court has held that the Application seeking amendment is not germane and relevant to the subject matter of the present Suit proceedings. It is held that the Plaintiff has not been able to prove so. Learned Trial Court has noted that the present Suit i.e. Regular Civil Suit No.418 of 2008 is virtually at the end of its determination and trial and allowing such an amendment which otherwise also cannot be allowed in law, would necessarily protract the Suit proceedings.

6. I am in complete agreement with the reasons returned by the learned Trial Court in paragraph No.7 of the order dated 05.06.2023. I need to clarify that, in the event if the Plaintiff is aggrieved by any encroachment on the Suit property by his adjacent co-owner, Plaintiff is at liberty to take out appropriate proceedings against the said third party as available to him in law. Impleadment of the third party in the present Suit proceedings seeking declaration against Defendants is completely unwarranted and cannot be permitted as it changes the nature of the Suit completely.

7. I do not find any reason to interfere with the order dated 05.06.2023. Resultantly, the order dated 05.06.2023 is sustained and confirmed.

- 8.** With the above directions, Writ Petition is dismissed.

[MILIND N. JADHAV, J.]

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