



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 11596 OF 2024

Vardhaman s/o Motiram Vahrade
Age: 61 years, Occ. Trading
R/o: Kasar Galli, Tuljapur
Tq. Tuljapur, Dist. Osmanabad

[Org. Deft.]
.....**PETITIONER**

VERSUS

Kumudini w/o Sunil Kolapkar
Age: 68 years, Occ. Trading
R/o: Kasar Galli, Tuljapur,
Tq. Tuljapur, Dist. Osmanabad

[Org. Pltf.]
.....**RESPONDENT**

Mr. K. K. Kulkarni, Advocate for the Petitioner
Mr. R. T. Deshmukh, Advocate for Respondent

CORAM : ROHIT W. JOSHI, J.

DATED : 01ST JULY, 2025

ORAL JUDGMENT :-

. The petitioner in the present petition is defendant in Regular Civil Suit No.193 of 2017, pending on the file of the learned Civil Judge, Junior Division, Tuljapur. The respondent is the original plaintiff. The petitioner and respondent are related to each other as real brother and sister.

2. The respondent has filed the said suit seeking declaration of the suit property i.e. house property bearing City Survey No.1152, admeasuring 70 Sq. meters and City Survey No.1154, admeasuring 139.50 Sq. meters situated within the limits of Municipal Council, Tuljapur is a joint Hindu family property of the plaintiff and defendant.

3. Petitioner has filed written statement in the said suit contending that the plaintiff/respondent has relinquished her share in the properties by a notarized affidavit dated 22.04.2006. At the stage, when the evidence of the plaintiff/respondent was over and the matter was posted for evidence of the petitioner/defendant, an application for amendment came to be filed by the petitioner/defendant on 01.02.2024 vide Exhibit 49. The petitioner/original defendant sought to amend the written statement in order to contend that after the alleged relinquishment by the plaintiff, he had incurred expenditure of around Rs.70,00,000/- (Rs. Seventy Lakhs only) towards renovation of the suit property.

4. Likewise, a contention was sought to be incorporated that after the demise of the father on 08.02.2006, the

defendant, plaintiff and mother of the parties had executed a document on stamp allowing defendant to withdraw amount of Rs.8000/- lying in Bank of Maharashtra in the name of deceased father and the amount withdrawn was given to the plaintiff. Likewise, it was also sought to be contended that after demise of the mother on 03.03.2012, the plaintiff had without notice or knowledge to the defendant, got her name mutated in the records of City Survey.

5. Although, the proposed amendment recites that the defendant got her name mutated, the learned Counsel for the petitioner draws attention to the document of mutation to contend that name of deceased mother and plaintiff were got mutated without recording name of the petitioner/defendant.

6. The learned Trial Court has rejected the application for amendment on the ground that the application did not satisfy the requirement of the proviso to Order VI, Rule 17 of the Code of Civil Procedure. It is also observed by the learned Trial Court that the proposed amendment was not necessary for adjudication of the controversy involved in the suit.

7. Learned Counsel for the petitioner contends that the amendment is necessary for effective adjudication of the suit and therefore, the learned Trial Court ought to have allowed the application for amendment. As regards the delay, he contends that the plaintiff could be compensated for the delay by awarding appropriate cost. He has placed reliance on judgment of Hon'ble Supreme Court in *Civil Appeal No.6400 of 2009* in the matter of *Surendra Kumar Sharma vs Makhan Singh* reported in *(2009) 10 SCC 626*.

8. Having heard the submissions of the learned Counsel for the petitioner and on perusal of the application for amendment, this Court finds that indeed, there are no averments in the application to demonstrate that the petitioner was unable to file the application for amendment before commencement of trial. Contents of the application taken on their face value do not satisfy the requirement of proviso to Order VI, Rule 17 of the C.P.C. The finding by the learned Trial Court that the contents of the application are lacking in this regard is correct. It is well settled that a Civil Court cannot allow application for amendment of pleadings

after commencement of trial, save and except in case where the parties seeking to amend the pleadings satisfy the requirement of due diligence.

9. The learned Trial Court has also observed that having regard to the nature of the suit, the proposed amendment was not relevant for effective adjudication of the suit. The said finding also appears to be correct. The suit is for declaration , the suit properties are joint Hindu family properties of plaintiff and defendant. The contents pertaining to withdrawal of amount and expenses allegedly spent for renovation of the property and mutation. As regards mutation, it is well settled that mutation entries do not confer or extinguish title in an immovable property and therefore averments pertaining to mutation are also not relevant for adjudication of the matter. The alleged expenditure on the house property and alleged payment of Rs.8000/- to plaintiff after demise of father are not relevant for decision of suit on merits. The defence of the petitioner/defendant is that the plaintiff/respondent, who is his sister had relinquished her right in the suit property in his favour by swearing an affidavit. It is for the defendant to

prove his defence. The learned Trial Court has not committed any error in rejecting the application for amendment.

10. The Writ Petition is therefore liable to be dismissed and is **dismissed** accordingly.

(ROHIT W. JOSHI, J.)

Rushikesh/2025