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

**WRIT PETITION NO. 6133 OF 2010
WITH
INTERIM APPLICATION NO. 9643 OF 2025**

Amirbi Abdul Rehman Mulla .. Petitioner
Versus
Prabhakar Dnyaneshwar Kute & Ors. .. Respondents

Ms. Rachana Harpale h/f Mr. Nitin P. Deshpande for petitioner.

CORAM: ALOK ARADHE, CJ.

DATE: 21st JULY, 2025

ORAL ORDER:

1. In this writ petition filed under Article 227 of the Constitution of India, the petitioner/plaintiff has assailed the validity of the order dated 1st July, 2010 passed by the trial Court in Regular Civil Suit No. 183 of 2000 by which application for amendment of the Written Statement filed by the respondents has been allowed.

2. Facts giving rise to the filing of the present writ petition, in nutshell, are that the petitioner/plaintiff had filed Regular Civil Suit No. 183 of 2000 seeking relief of partition and separate possession of 1/3rd share of the suit property. On the basis of the pleadings of the parties, the trial court framed the issues. Thereafter, the petitioner/plaintiff filed evidence affidavit. The respondents/defendants, therefore, filed an application seeking to amend the Written Statement. A plea was taken that defendants had become owner of the suit plot, i.e., 1/3rd share by virtue of adverse possession. The

aforesaid application was allowed by the trial court by the impugned order. Hence, this writ petition.

3. Learned counsel for the petitioner submits that the trial court ought to have appreciated that the proposed amendment was belated and the trial had commenced. Therefore, the same is hit by provisions of Order VI Rule 17 of the Civil Procedure Code, 1908.

4. I have considered the submission made by the learned counsel for the petitioner. None has appeared for the respondents.

5. In the instant case only affidavit in evidence of the petitioner/plaintiff was filed. It is trite law that an application for amendment which, otherwise, would be necessary for a fair and complete adjudication of the controversy involved in the suit cannot be rejected solely on the ground of delay. ***[See Sampath Kumar vs. Ayyakannu & Anr., (2002) 7 SCC 559].***

6. The impugned order, therefore, neither suffers from any jurisdictional infirmity nor any error apparent on the face of the record warranting interference by this Court in exercise of powers under Article 227 of the Constitution of India.

7. In the result, petition fails and the same is hereby dismissed. Interim Application also stand disposed of.

8. However, taking into account that the Suit is pending since 2000, the trial court shall make an endeavour to conclude the trial expeditiously.

(CHIEF JUSTICE)