

## 2020 PLRonline 5013

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Supreme Court of India

JUSTICE ASHOK BHUSHAN, JUSTICE M.R. SHAH

### **Pandit Malhari Mahale v. Monika Pandit Mahale & Ors**

CIVIL APPEAL NO. 189 of 2020 [@ Special Leave to Appeal (C) No(s). 5888/2019]

10.01.2020

**Civil Procedure Code 1908 (V of 1908) Order 6 Rule 17 - Evidence had begun and thereafter amendment application was filed - Without a finding that the party could not have raised the matter before commencement of trial with due diligence, the application for amendment cannot be allowed - Without their being any finding by the Court as contemplated by Order VI Rule 16 proviso, the Court ought not to have allowed the amendment.**

Order

1. Leave granted.
2. We have heard learned counsel for the appellant. Despite service, no one is present on behalf of the respondents.
3. This appeal has been filed against the judgment and order dated 14.08.2018 passed by the High Court in W.P. (C) No. 11263/2016, by which the High Court dismissed the writ petition.
4. A suit for partition was filed by the respondents i.e. wife and children of the appellant. In the suit, evidence started and thereafter an application for amendment of plaint was filed by plaintiff No.3. The amendment was objected by the defendant (appellant herein). However, the learned Civil Judge by order dated 09.03.2016 allowed the application against which the writ petition was filed which was dismissed.
5. Learned counsel for the appellant submits that evidence had already begun and in view of Order VI Rule 16 of the Code of Civil Procedure, 1908 the amendment could not have been considered unless the Court return a finding that in spite of due diligence, the party could not have raised the matter before the commencement of the trial.
6. We have considered the submissions of learned counsel for the appellant and perused the record.
7. From the evidence on record, it does appear that evidence had begun and thereafter amendment application was filed. Without their being any finding by the Court as

contemplated by Order VI Rule 16 proviso, the Court ought not to have allowed the amendment.

8. In the present case, the Civil Judge has not returned any finding that the Court is satisfied that in spite of due diligence, the party could not have raised the matter before the commencement of trial. In **Vidyabai v. Padmalatha**, [(2009) 2 SCC 409], this Court observed in para 19 as under:

*“19. It is primal duty of the Court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed. However, proviso appended to Order 6 Rule 17 of the Code restricts the power of the court. It puts an embargo on exercise of its jurisdiction. The court’s jurisdiction in a case of this nature is limited. Thus unless the jurisdictional fact, as envisaged therein, is found to be existing, the court will have no jurisdiction at all to allow the amendment of the plaint.”*

9. There being no finding by the Court that the Court is satisfied in spite of due diligence, the party could not introduce amendment before commencement of the trial, the order of the Trial Judge is unsustainable. The High Court has not adverted to the above aspect of the matter. In view of aforesaid, we allow the appeal and set aside the order of the High Court as well as of the Civil Judge, the amendment application stands dismissed.