

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

WRIT PETITION NO. 8778 OF 2015

Chandrakant s/o Narhari Joshi
& Ors.

..... PETITIONERS

V E R S U S

Chitra w/o Vasantryao Kulkarni

..... RESPONDENT

.....

Mr. T.M.Venjane, Advocate for Petitioners.

.....

CORAM : SUNIL P. DESHMUKH, J.

DATE : 31st AUGUST, 2015

ORDER :-

1. Heard the learned counsel for the petitioners.
2. The principal objection to the impugned order on Exh. 19 in R.C.A. No. 183/2010 dated 12/06/2015 is on the ground that the said application has been filed during pendency of appeal and is long belated after the dismissal of the suit of the plaintiff. The learned counsel submits that such a belated application is not maintainable in view of the provisions of Order VI, Rule 17 of the Code of Civil Procedure, particularly proviso to it. He contends that the discrepancy in respect of particulars of property, had been objected to in the Written Statement. Despite that, no

corrective action had been taken immediately. Even after dismissal of the suit, action is taken in the year 2013. He, therefore, submits that the appellate court has erred in granting said application.

3. Perusal of the impugned order shows that there is no dispute about the house property being included in the suit for partition albeit some particulars do not appear to be given in respect of the same. The plaintiff is a lady and her application does not appear to be without substance because during the course of evidence even defendant No. 1 has referred the ancestral house property but with different number as house No. 26. The plaintiff seeks correction as house number No. 51 in stead of house No. 26.

4. The learned Judge of the appellate Court has given sound reasons in para Nos. 4 to 6. In view of the same, I do not think that the impugned order requires interference. The discretion has been exercised properly.

5. Under the circumstances, I am not inclined to invoke the extra ordinary powers under writ jurisdiction.

6. Hence, Writ Petition is rejected.

[SUNIL P. DESHMUKH, J.]