

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

WRIT PETITION NO. 5137 OF 2015

Smt. Maya Eknath Virnodkar

Petitioner

Vs

Sou Sushila Shriram Werekar
and Ors.

.. Respondents

Mr. G.H. Keluskar, Advocate for the petitioner.

CORAM : R.G.KETKAR,J.

DATE : 25/06/2015

PC:

1. Heard Mr. G.H.Keluskar, learned counsel for the petitioner at length.

2. By this Petition under Article 227 of the Constitution of India, original defendant no.1 has challenged the Judgment and order dated 4.3.2015 passed by the learned Jt Civil Judge, Jr. Dn, Sawantwadi below Exh.89 in Regular Civil Suit No.83 of 2006. Defendant no.1 took out application at Exh.89 contending, inter alia, that the plaintiff has failed to bring all the properties of their father in hotchpotch for partition between them. The plaintiffs have also deleted 42 properties, situated in State of Goa. These 42 properties are necessary in a suit for partition. Defendant no.1, therefore, filed application for dismissing the suit on the ground of not including nonjoinder of all necessary properties.

3. By separate order passed by me in Writ Petition No.5136 of

2015, I have upheld the order dated 4.3.2015 passed by the learned trial Judge below Exh.135, thereby, granting leave under Order II Rule 3 of C.P.C. and reserving right of the plaintiff to institute suit for partition. I do not find any case is made out for interfering with the impugned order. Hence, Petition fails and the same is dismissed. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

(R.G.KETKAR, J.)