

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5136 OF 2015**

Smt. Maya Eknath Virnodkar

Petitioner

Vs

Sou Sushila Shriram Werekar
and Ors.

.. Respondents

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

CORAM : R.G.KETKAR,J.

DATE : 25/06/2015

PC:

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

2. This Petition is instituted by original defendant no.1 challenging the Judgment and order dated 4.3.2015 passed by the learned Jt. Civil Judge, Jr. Dn, Sawantwadi below Exh.135 in Regular Civil Suit No.83 of 2006. By that order, the learned trial Judge allowed the application made by original plaintiff under Order II, Rule 3 of C.P.C. for deleting 42 properties set out in the application reserving right to institute suit for partition at a latter stage.

3. In support of this Petition, Mr. Keluskar submitted that admittedly all 42 properties are joint family properties. The plaintiff had included these 42 properties in the suit and by application at Exh.135 filed under Order II, Rule 3, he has deleted those properties reserving the right to institute a suit for partition at a later stage. Having regard to the fact that all the

properties are joint family properties, the learned trial Judge ought not to have allowed that application and ought to have decided the suit on the basis that all these 42 properties are also included in a suit for partition.

4. It is not possible to accept this submission for more than one reason. Perusal of the application at Exh.135 shows that the plaintiff has asserted that the properties set out from sr.no.1 to 42 therein are situate at Mouze-Mopa, Tal.Pedne in State of Goa. It is further asserted that Portuguese Civil Court governs the succession rights whereas as far as State of Maharashtra is concerned, it is governed by Hindu Succession Act. It is in this circumstance, the plaintiff had filed application under Order II Rule 3. Secondly, even in paragraph 8 of the Petition, the petitioner himself stated that evidence is over and the suit is posted for hearing. Even on this ground also it is not possible to interfere 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.)