

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7283 OF 2009

WITH

CIVIL APPLICATION NO.3207 OF 2015

Shri Mahadev Martand Tupe.] ... Petitioner
Versus
Smt. Laxmibai Vishwanath Tupe and Ors.] ... Respondents

Mr. D. S. Patil for Petitioner.

CORAM :- M. S. SONAK, J.

DATE :- DECEMBER 05, 2015

P. C. :-

1. **Not on board. Upon production, taken on board.**

2. The reason set out in the Civil Application, seeking recall of order dated 18/04/2015 is that Writ Petition No.7283 of 2009 was an admitted matter and therefore, the learned Counsel for petitioner failed to notice the said matter on the supplementary board though the supplementary board was duly published.

3. In view of the aforesaid reason, the order made on 18/04/2015 is hereby recalled and the Writ Petition is now taken up for final hearing.

4. Mr. Patil, learned Counsel for petitioner, has submitted that the learned Trial Court has not applied the correct parameter in the matter of grant of leave to amend. In this case, the amendment

was not at all necessary for deciding the real controversy between the parties. In any case, Mr. Patil has submitted that if amendment is to be allowed, leave was required to be granted to the petitioner to file additional written statement in response to the amended plaint.

5. If the record is perused, it cannot be said that the amendment was not necessary for the purposes of deciding the real controversy between the parties. The suit primarily seeks partition of properties of one Eknath. The amendment, if permitted, will undoubtedly assist in adjudication of all the issues between the parties and consequently the real controversy between the parties. By grant of leave to amend, multiplicity will also be avoided. There is really no jurisdictional error or perversity in the making of the impugned order.

6. Mr. Patil is however right in his submission that leave is necessary to be granted to the petitioner for filing additional written statement in pursuance of the leave to amend. Accordingly, such leave is granted to the petitioner. The petitioner to file additional written statement within a period of four weeks from today.

7. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

8. Writ Petition and the Civil Application are disposed of in the aforesaid terms.

(M. S. SONAK, J.)