

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

WRIT PETITION NO. 456 OF 2016

**MANJULABAI MAROTI SHINDE
VERSUS
MAROTI NIVRUTTI SHINDE AND OTHERS**

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Mr.S.B.Ghatol-Patil, Advocate for petitioner

Mr.S.J.Salunke, Advocate for respondent no.6

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CORAM : S.V. GANGAPURWALA, J.

DATE : APRIL 24, 2017

PER COURT :

This petition is filed challenging the order passed by the trial Court thereby allowing the amendment application filed by present respondent no.6/plaintiff.

2. Mr.Ghatol, learned Counsel for the petitioner submits that the respondent/plaintiff filed a suit for partition and separate possession. He submits that the respondent/plaintiff did not add the properties sold by him. An objection was raised by the

petitioner/defendant that the plaintiff has not included all the properties and the suit is bad. Thereafter examination-in-chief was also led and subsequently, the amendment application came to be filed. There is no recital of due diligence in the application. He submits that the said application could not have been allowed by the trial Court.

3. I have also heard the learned Counsel for the respondent/plaintiff.

4. The suit is filed for partition and separate possession. No doubt in the suit for partition and separate possession, all the parties and all the properties are to be included. The respondent/plaintiff is claiming partition only in respect of some of the properties. What would be the consequences of not including all the properties will be considered by the Court. The petitioner/ defendant is entitled to raise the said plea. By way of amendment, only paragraph 7

came to be added to the effect that the respondent/plaintiff is restricting his right to the extent of the suit properties and is not claiming any right in respect of the other properties, which are sold. The respondent/plaintiff will face the consequences if it is shown by the petitioner/ defendant that other joint family properties exist and the same are not being made part of the suit.

5. Considering that the suit is for partition and separate possession and the trial Court has exercised its discretion while allowing the application for amendment, I do not deem it appropriate to interfere with the impugned order.

6. The Writ Petition is disposed of with the afore-said observations. No costs.

[S.V. GANGAPURWALA, J.]

kbp