

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5065 OF 2017
(Uttam Krushna Kamble Vs. Sarubai Tulshiram Karnure and others)

Mr.S.N.Patne, learned counsel for the petitioner.

(CORAM : M.S.Sanklecha, J.)

DATE : 04/05/2017

PER COURT :

1. Not on board. Mentioned. Upon mentioning, taken up for consideration.
2. This petition challenges the order dated 11/01/2017 passed by the Joint Civil Judge, J.D. The impugned order passed in execution proceeding has allowed the decree holder to amend the execution petition.
3. The suit was filed by the plaintiff i.e. the decree holder against the respondents including the petitioner herein for partition and separate possession under the provisions of Hindu Law. The Trial Court had decreed the suit in favour of respondent No.1 herein allotting her 2/9th share in the joint family property. Being aggrieved, respondent No.1 carried the issue in appeal and the District Court

enhanced her share to $1/3^{\text{rd}}$ of the joint family property.

4. The petitioner, being aggrieved by the order in appeal by the District Court, preferred a Second Appeal before this Court and this Court, by an order dated 11/03/2016, restored respondent No.1's share to $2/9^{\text{th}}$, as allotted by the Trial Court.

5. In the meantime, the decree holder had filed a petition on the basis of the order passed by the District Court in appeal allotting her $2/9^{\text{th}}$ share in the joint family property. However, in view of the order of this Court in Second Appeal, limiting the share of respondent No.1 to $1/3^{\text{rd}}$ of the joint family property, respondent No.1 sought an amendment to the petition. This was allowed by the Trial Court rejecting the petitioner's contention that the decree holder should withdraw the present execution proceedings and file a fresh proceedings.

6. The impugned order allowing the amendment to the petition is in no manner perverse as the petition is being amended to bring down the respondent No.1's share from $1/3$ to $2/9^{\text{th}}$ in the joint family property as consequence of the judgment of this Court.

7. In the above view, no interference under Article 227 of the Constitution of India is warranted. Petition stands dismissed.

(M.S.Sanklecha, J.)