

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****WRIT PETITION NO. 3767 OF 2017****Dhanashree @ Dhanwant Jagannath Barne Petitioner****VERSUS****Bhalchandra Shankar Pawar & Ors. Respondents**

Mr.Vaibhav Gaikwad for the Petitioner.

Mr.Chetan Damre for the Respondent no.1.

CORAM : R.D. DHANUKA, J.**DATE : 17th SEPTEMBER, 2018****P.C.**

By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 13th February, 2017 passed by the learned trial court rejecting the application (Ex.78) filed by the petitioner (original plaintiff) under Order 6 Rule 17 of the Code of Civil Procedure, 1908 seeking amendment to the plaint relying upon the decree passed by the learned Civil Judge, Junior Division, Khandala on 31st July, 1991 in Regular Civil Suit No.136 of 1987.

2. The petitioner (original plaintiff) had filed a civil suit *inter alia* praying for partition of the property in which the legal heirs of Ms.Sonabai Shankar Pawar have been impleaded as defendant no.1 and defendant no.3. The petitioner has urged in the application for impleadment that by a judgment and decree dated 31st July, 1991

passed by the learned Civil Judge, Junior Division in Regular Civil Suit No.136 of 1987, a finding is rendered that the marriage between the deceased Shankar and Sonabai was not performed as per section 6 of the Hindu Marriage Act and the petitioner became entitled to the entire property of the deceased Shankar.

3. It is not in dispute that the evidence in the present suit is already concluded. The said decree relied upon by the petitioner was dated 31st July, 1991. The matter is at the argument stage.

4. It is the case of the respondents that the evidence recorded in this suit is inconsistent with the said decree passed by the learned trial court in the Regular Civil Suit No.136 of 1987.

5. I do not find any infirmity with the impugned order passed the learned trial judge rejecting the application for amendment at the stage for final arguments. The learned trial judge can consider the effect of the said decree dated 31st July, 1991 at the stage of the hearing of final arguments of both the parties and if the said decree is at all applicable to the parties in this dispute, the same shall be considered by the learned trial judge while hearing the final arguments of both the parties.

6. Writ petition is dismissed with the aforesaid clarification. No order as to costs.

[R.D. DHANUKA, J.]