

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****WRIT PETITION NO. 12709 OF 2017****Vitthal Daji Koli (Ranjane),****Since deceased through his legal heirs****..... Petitioners****VERSUS****Baburao Anu Koli (Ranjane) & Ors.****..... Respondents**

Mr.Prabhanjan Gujar for the Petitioners.

Mr.Tejas Dande, i/b. Mr.Tejas Dande & Associates for the Respondent nos. 1 and 2.

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 30th March, 2017 passed by the learned Civil Judge, Junior Division, Medha rejecting the application at Ex.68 filed by the petitioner (original plaintiff) *inter alia* praying for amendment in the plaint by incorporating 11 landed properties and five house hold properties as the suit properties. Admittedly the suit was for partition of various properties. The petitioners had applied for liberty to withdraw the said suit with liberty to file a fresh suit for partition of both the properties which application was opposed by the defendants and was rejected by the learned trial judge. The petitioner therefore applied for amendment so as to incorporate 11 landed properties and five household properties. The said application is however rejected by the learned Civil Judge, Junior Judge accepting the plea of the defendants that in their written

statement, the defendant nos. 1 and 2 had specifically prayed that all the ancestral properties of the deceased Daji including the suit property was already partitioned by metes and bounds in the year 1970.

2. In my view to avoid any multiplicity of the proceedings 11 landed properties and five household properties were sought to be included as properties of the joint family by the petitioner, the learned trial judge ought to have allowed the said application for amendment. The issues are framed however, the evidence has not yet commenced. I, therefore, pass the following order :-

(a) The impugned order dated 30th March, 2017 passed by the learned Civil Judge, Junior Division below Ex.68 is quashed and set aside.

(b) Application (Ex.68) for carrying out amendment is allowed. Amendment to be carried out within four weeks from today.

(c) Amended copy of the plaint shall be served upon all the defendants within two weeks from the date of carrying out amendment.

(d) The defendants would be at liberty to file additional written statement within four weeks from the date of service of copy of the amended plaint.

(e) It is made clear that merely because the amendment as prayed is granted, that would not indicate that the defendant nos. 1 and 2 have accepted that the additional properties sought to be included in the suit are ancestral or joint family properties.

(f) The suit shall be proceeded with on its own merits without being influenced by the observations made in the impugned order dated 30th March, 2017 after considering the pleadings, documents and evidence of both the parties including the amended written statement.

3. Writ petition is allowed in the aforesaid terms. There shall be no order as to costs.

4. Hearing of the suit is expedited.

[R.D. DHANUKA, J.]

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Vinod
Mayekar

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