

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.13937 OF 2017

Parvati Mahadeo Lokare through POA ... Petitioner

Vs.

Hanumant Damodar Moharkar & Ors. ... Respondents

.....

Mr. Sanskar Marathe for the petitioner.

Mr. Harinder Toor I/b. Mr. Subhash Bane I/b. S.B. Legal Associate
for respondent Nos.1 to 3.

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CORAM : M. S. KARNIK, J.

DATE : 17th SEPTEMBER, 2019.

P. C.:

1. Heard learned counsel for the petitioner.
2. The plaintiff filed a suit for partition. The petitioner is the original plaintiff challenges the order dated 6.11.2017 passed by the Trial Court below Exhibit 57. The defendant No.1 had filed an application Exhibit 57 for amending the written statement. The defendant submitted that the father of the defendant had made a will and defendant had no knowledge of the will. The will could not be brought on record and the stand in so far as the will is concerned could be taken only after the subsequent event came into light. This being the subsequent event which the defendant

was not aware, it is contended that despite exercise of due diligence, the stand as regards the will is not taken in written statement. The Trial Court by the order allowed the application Exhibit 57 for amending the written statement.

3. Learned counsel for the petitioner-original plaintiff contended that it is only after the examination in chief of the plaintiff that the application is made. He submits that there is hardly any explanation in the application showing that there has been due diligence. Moreover, the will which is dated 5.10.2003 is sought to be brought on record almost after 12 or 13 years.

4. I have gone through the order passed by the Trial Court. The Trial Court has allowed the application Exhibit 57 subject to payment of cost of Rs.1,000/-. By way of the amendment to the written statement, the defendant wanted to bring on record subsequent events after he got knowledge of the will. In the application he has stated that after the will was found the application for amending written statement was made. This is a suit for partition filed by the plaintiff. I see no reason to interfere with the order passed by the Trial Court.

5. The petition is rejected with no order as to costs.

(M. S. KARNIK, J.)