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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6808 OF 2020

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| 1. Sangita Ashok Karande
Age – 39 years, Occ – Household
R/o Udgir, Taluka – Udgir, District – Latur | PETITIONERS |
| 2. Shradha Ashok Karande
Age – 19 years, Occ – Education
R/o Udgir, Taluka – Udgir, District – Latur | |
| 3. Ashish s/o Ashok Karande
Age – 18 years, Occ – Education
R/o Udgir, Taluka – Udgir, District – Latur | |

VERSUS

- | | |
|---|-------------|
| Devidas Ganpatrao Karande
Died Through LRs | RESPONDENTS |
| 1. Tarabai Devidas Karande
Age – 68 years, Occ – Household
R/o Chambhar Society, Udgir,
District – Latur | |
| 2. Rekha Suryakant Bhabhalsure
Age – 42 years, Occ – Household
R/o Killari, Taluka – AUSA
District – Latur | |
| 3. Shruti Shankar Karande
Age – 12 years, Occ – Education
Under Guardianship of
Ramalbai Madhav Hingole
Age – 55 years, Occ – Household
R/o Shahpurwadi, Taluka – Degloor,
District – Latur | |

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Mr. Nikhilesh K. Tungar, Advocate for the petitioners
Mr. Anand V. Patil – Indrale, Advocate for respondents No.1 & 2

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 5th JANUARY, 2022

ORDER :

1. Challenge raised in this petition is to the order passed by learned District Judge-2, Udgir, District - Latur below Exhibits-26 and 29 in Regular Civil Appeal No. 55 of 2017.

2. The petitioners are the original plaintiffs and respondents No.1 and 2 are original defendants in Regular Civil Suit No.260 of 2014.

3. The petitioners filed the suit for partition and separate possession of the joint family property. The suit came to be dismissed for non-joinder of necessary party (respondent No.3 herein). The petitioners, therefore, preferred Regular Civil Appeal No. 55 of 2017 challenging the judgment and decree passed in Regular Civil Suit No. 260 of 2014. In the cause title of the appeal memo, the petitioners arrayed respondent No.3 as party respondent through guardian – grand father Madhav Kondiba Hingole.

4. During pendency of the appeal, Madhav Hingole expired, hence application Exhibit-26 was filed by the petitioners seeking permission to substitute name of grand mother Ramalbai Madhav Hingole in place of grand father Madhav Kondiba

Hingole.

5. Said application Exhibit-26 was resisted by respondents No.1 and 2. The respondents No.1 and 2 filed application Exhibit-29 requesting that name of respondent No.3 – Shruti d/o Shankar Karande U.G. Madhav Kondiba Hingole be deleted or strike out from the array of the respondents in the appeal memo (Exhibit-1).

6. The first appellate court, rejected application Exhibit-26, by the impugned order, on the ground that respondent No. 3 Shruti, who is minor, was not a party to the original suit and she is joined as a party in the appeal without the permission of the court. Her guardian is also not appointed with the permission of the court, therefore, no question arises to amend the appeal memo by bringing on record wife of deceased Madhav Hingole. The proposed amendment is not necessary for the purpose of determining real question in controversy between the parties.

7. Application Exhibit-29 filed by respondents No. 1 and 2 came to be allowed on the same grounds on which Exhibit-26 was rejected and the petitioners/appellants are directed to delete name of respondent No.3 Shruti Shankar Karande from the array of respondents in appeal memo. The petitioners are

aggrieved by both these orders.

8. After hearing rival submissions of both the learned advocates, representing the petitioners and respondents No. 1 and 2 and after going through the record, it is clear that respondent No. 3 – Shruti was not a party in the suit filed by the petitioners for partition and separate possession and on that ground the suit came to be dismissed. In the appeal, the petitioners, without obtaining permission of the appellate court, under Order I, Rule 10 of the Code of Civil Procedure, arrayed Shruti as respondent No. 3 through her guardian – grand father. After death of grand father, by filing application Exhibit-26, name of grand mother of Shruti was sought to be substituted, as her guardian by amending the appeal memo. Said application is rightly rejected by the appellate court, as respondent No. 3 was arrayed as party respondent in the appeal memo, without obtaining prior permission of the appellate court.

9. The appellate court was also justified in allowing the application Exhibit-29 filed by respondents No. 1 and 2 on the same ground that respondent No. 3 was not a party in the Regular Civil Suit and she was arrayed as party respondent in the appeal, without prior permission of the appellate court.

10. No illegality or perversity is found in the orders impugned in the present writ petition. Writ petition is, therefore, dismissed.

11. It is made clear that the petitioners are at liberty to file application seeking impleadment of respondent No. 3. If such application is filed by the petitioners, the appellate court shall consider it on its own merits, without being influenced by the orders passed below Exhibits-26 and 29.

[NITIN B. SURYAWANSHI]
JUDGE

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