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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11528 OF 2021

Sau. Kamlabai Rausaheb Shipalkar

PETITIONER

VERSUS

Shivaji Laxman Palaskar and Others

RESPONDENTS

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Mr. Amol K. Gawali, Advocate for the petitioner

Mr. Y. K. Kakade, Advocate for respondents No.1 to 3

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 30th AUGUST, 2022

ORDER :

1. Challenge in this petition is to the order dated 17th September, 2021 passed below Exhibit-21 in Regular Civil Appeal No. 74 of 2019 by the learned District Judge-8, Ahmednagar.
2. Regular Civil Suit No. 273 of 2013 filed by the petitioner for partition and separate possession is decreed by the Trial Court. The judgment and decree of the Trial Court is challenged by the respondents in Regular Civil Appeal No.74 of 2019. In appeal, the respondents filed application Exhibit-21, seeking amendment in the written statement Exhibit-32, contending that they found old record in respect of the properties land Gut no. 645/1 admeasuring 57 Are, locally known as Pandhari and land

Gut No. 645/2 admeasuring 90 Are, and it was realized that the said lands were not ancestral lands and those were inadvertently incorporated in the common hotchpotch. It is further claimed that property House No. 452/1, described in para 1-B (2) of the plaint, was constructed by respondent No.1 out of his self earned income. Similarly, amendment is also sought in respect of Gram Panchayat House no. 207, situated at Mauje Palve, Taluka - Parner, District - Ahmendagar.

3. The Appellate Court has allowed the said amendment application and permitted the respondents to amend the written statement. The respondents also filed application Exhibit-27 seeking permission to lead additional evidence. On the said application, the order is passed that application Exhibit-27 to be decided along with the appeal. Both these orders are impugned in this petition.

4. The petitioner, on 13th August, 2022, has filed affidavit, wherein it is stated that the petitioner is accepting the theory put forth by respondent No1, which is sought to be introduced by virtue of para 9A, in respect of lands bearing Gut Nos. 645/1 and 645/2. She has admitted the contents of sale deeds dated 3rd July, 1961 and 4th June, 1963, which respondent No.1 has sought to prove by virtue of additional evidence. It is categorically

stated that the petitioner has no right, title or interest in respect of lands Gut No. 645/1 and 645/2, described in Item 7 of para 9A of the plaint. It is further stated in the affidavit that the petitioner is not interested in claiming any share or right, title and interest in the house property bearing House No. 452/1, described in para 1-B (2) of the plaint and she has relinquished her right, title or interest in respect of said house property.

5. As far as amendment as per 9 B is concerned, the petitioner has averred that she has not sought share in Gram Panchayat House No. 207, situated at Mauje Palve, and she has declared that she does not have any right, title or interest in the Gram Panchayat House No. 207 and she has relinquished her right, title or interest, if any, in the said Gram Panchayat House No. 207. The petitioner has further averred in the affidavit that since the petitioner has relinquished her rights in the properties mentioned in the amendment, it is not necessary to prove documents, which are sought to be produced on record by respondent No.1, which are filed along with Exhibit-21. It is further averred that as the petitioner has relinquished her right in the properties mentioned in para 9A and 9B of the plant, it is not necessary for respondent No.1 to lead additional evidence. For the purpose of identification, the affidavit is marked "X".

6. In the light of the affidavit Exhibit-X, filed by the petitioner, thereby relinquishing her rights in the properties mentioned in the amendment, it is not necessary for respondent No.1 to lead additional evidence in respect of the amendment. In that view of the matter, the Appellate Court is directed to decide the appeal on its own merits expeditiously by taking into consideration the additional affidavit Exhibit-X, filed by the petitioner in this Court.

7. With the aforesaid directions, the writ petition is disposed of. Taking into consideration the fact that the petitioner is old and infirm lady, the Appellate Court shall decide the appeal as expeditiously as possible and in any case, within a period of 3 months from the date of receipt of writ of this order. The parties shall co-operate for the expeditious disposal of the appeal.

[NITIN B. SURYAWANSHI]
JUDGE