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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3367 OF 2019

Asha Ramdas Dusunge

PETITIONER

VERSUS

Sudhakar Limbaji Dusunge and Others

RESPONDENTS

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Mr. Sudhir K. Chavan, Advocate for the petitioner

Mr. S.P.Salgar h/f Mr. N.V.Gaware, Advocate for respondents 1to5

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 4th AUGUST, 2022

ORDER :

1. The petitioner is aggrieved by the order passed by the learned 6th Joint Civil Judge, Senior Division, Ahmednagar below Exhibit-66 in Regular Civil Suit No. 112 of 2016, thereby rejecting the application filed by the petitioner under Order VI, Rule 17 of the Civil Procedure Code.

2. The petitioner filed the suit for partition and separate possession of the ancestral properties. The suit was resisted by the respondents, by filing written statement wherein a specific contention is raised that there has been no partition of the suit properties at any point of time, whereas averment in the plaint is that there was partition. Thereafter, the suit proceeded and the

evidence was led by both the parties.

3. After arguments of the defendants are over, present application Exhibit-66 is filed by the petitioner seeking amendment in the plaint thereby withdrawing the admission given by her that there was partition earlier and seeking to add brothers and sister of original defendant No.1 as defendants No. 8 to 15 in the suit. This application is rejected by the Trial Court. Hence, the present writ petition.

4. Heard learned advocate for the petitioner and learned advocate for the respondents.

5. Admittedly, the petitioner – plaintiff has specifically pleaded in the plaint that there was partition of the suit property earlier. During her evidence, the plaintiff has reiterated the said fact in the cross-examination. Though the respondents – defendants specifically averred in their written statement that there is no such partition, the petitioner stuck up to her pleading that there was partition and she has also given evidence to that effect. In that view of the matter, at the fag end of the trial, after final arguments of the defendants are over, present application is moved by the petitioner seeking amendment to the plaint and the same is rightly rejected by the Trial Court.

6. The petitioner, by way of amendment, which is proposed at the fag end of the trial, is trying to withdraw the admission given by her in the plaint as well as in the evidence, which is not permissible. There is total lack of due diligence on the part of the petitioner in proposing the said amendment.

7. The Trial Court has given proper reasons while rejecting the application. There is no illegality or perversity in the order impugned in the present writ petition. This Court does not find any ground to interfere in the impugned order, in the extraordinary writ jurisdiction. Writ petition, being devoid of merit is dismissed. No costs.

[NITIN B. SURYAWANSHI]
JUDGE