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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 10540 OF 2018

ANIL RAMCHANDRA SHINDE AND ANR

....PETITIONERS

V/s.

RAMCHANDRA BAPU SHINDE AND ORS

.....RESPONDENTS

Mr. Mahindra Deshmukh Advocate for the Petitioners

None for Respondents

CORAM : NITIN W. SAMBRE, J.

DATE: FEBRUARY 26, 2022.

P.C.:

- 1) Though served, none appears for Respondents.
- 2) In a Suit for partition, Respondent nos. 9 to 12 are permitted to be impleaded wherein Respondent no. 11 claimed to be wife of Respondent no. 1. Respondent nos. 9 to 12 submitted their written statement on 29/11/2017 and subsequent thereto, after evidence of Plaintiff was recorded, Petitioner-Plaintiff moved an Application for amendment which is rejected vide impugned order dated 29/06/2018.

3) The submission of learned counsel for the Petitioner is, even if in the evidence, Petitioner has given an admission that the fact about marriage of mother of the Petitioner with Defendant no. 1 was prior in point of time with that of Respondent no. 11, said fact inadvertently remained to be pleaded. Said fact is required to be brought on record in view of impleadment of Respondent nos. 9 to 12.

4) Suit is for partition and separate possession. As such, parties to the Suit have common interest in the Suit property.

5) In the aforesaid background, so as to have effective adjudication on real controversy involved in the Suit, even if the Suit has proceeded with recording of evidence of the Plaintiff, considering the nature of amendment sought, in my opinion same is necessary for adjudication of the Suit claim. It is worth to mention here that though served, none appears for Respondent to controvert the contentions.

6) That being so, Petition stands allowed. Order passed below Exh. 67 on 29/06/2018 is hereby set aside. Application Exh. 67 stands allowed subject to payment of cost of Rs. 5000/- to be deposited in the Trial Court within period of two weeks from today which shall be

condition precedent for carrying out amendment in the Plaint. The Trial Court shall be at liberty to pass appropriate order in regard to apportionment of the cost.

[NITIN W. SAMBRE, J.]