

VRJ

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

WRIT PETITION NO.11276 OF 2023

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Changdev Dnyanoba Kaluke & Ors. ... Petitioners

V/s.

Ramrao Dnyanoba Kaluke & Anr. ... Respondents

Mr. Prasad P. Kulkarni for the petitioners.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 11, 2023

P.C.:

1. Challenge in this petition is to the order of allowing amendment of plaint in a suit for partition to add co-sharer as a party to the suit.

2. According to the learned advocate for the petitioners, ground of non-joinder of necessary party i.e. sister was raised on 7th January 2008. The affidavit of examination-in-chief was filed on 15th October 2018. On 9th November 2018, part cross-examination was completed. In furtherance of amendment, on 16th September 2022, additional affidavit of examination-in-chief was filed.

3. The application to add sister as party to the suit was filed on 3rd Mach 2023. The Trial Court allowed the amendment subject to payment of costs of Rs.5,000/-.

4. Considering the nature of order, only modification to the

extent of costs imposed by the Trial Court can be granted. However, it shall be open for the petitioners to raise challenge to the validity of order under section 105(1) of the Civil Procedure Code, 1908, if the decree is against the petitioners.

5. Considering the facts, the plaintiffs are directed to pay additional costs of Rs.5,000/- to the petitioners. Subject to this modification and subject to liberty to challenge impugned order under section 105 of the Civil Procedure Code, 1908, the writ petition stands disposed of.

(AMIT BORKAR, J.)