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

WRIT PETITION NO.13423 OF 2023

Sayali Rajaram Bobade

... Petitioner

V/s.

Vinayak Popat Shinde & Ors

... Respondents

Mr. Bhushan Walimbe, for Petitioner.

Mr. Vinayak P. Shinde, for Respondent.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 2, 2023

P.C.:

1. Challenge in this writ petition is to the orders dated 30 September 2023 and 4 December 2021.
2. In a suit for partition and separate possession and declaration, the plaintiff filed an application for bringing legal representatives on record and for amendment of the plaint. The application was below Exhibit 1041.
3. By order dated 4 December 2021, the Trial Court considered prayer for bringing legal representatives on record. However, while passing operative order, the Court allowed entire application below Exhibit 104 resulting in grant of both prayers i.e. for bringing legal representatives on record on amendment of

the plaint.

4. In furtherance of the order, the plaintiff carried out the amendment.

5. The petitioner, therefore, filed an application for striking out the pleadings. While deciding the application for striking out the pleadings, the Trial Court allowed amendment as prayed below Exhibit 104.

6. In my opinion, order dated 4 December 2021 to the extent of allowing amendment in the plaint cannot be sustained. Resultantly, in an application filed by the petitioner for striking out pleadings, the Trial Court could not have allowed the amendment of the plaint as application below Exhibit 104 was already disposed of. Hence, it would be in the interest of justice, that orders dated 30 September 2023 and 4 December 2021 to the extent, it allowed amendment to the plaint need to be set aside. Hence, following order:

a) The order dated 30 September 2023 which allows amendment of plaint as prayed in application below Exhibit 104 is set aside.

b) The application below Exhibit 104 to the extent of prayer for amendment is restored to the file of Trial Court. The Trial Court shall decide the prayer for application for amendment of plaint in accordance with law uninfluenced by earlier orders dated 30 September 2023 and 4 December 2021.

7. The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)