

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5801 OF 2024

Vithal Sidhu Shinde and Ors.

.. Petitioners

Versus

Shantabai Shankar Shinde and Anr.

.. Respondents

.....

- Mr. Jayant Gaikwad a/w. Ms. Pushpa Prajapati, Advocates for Petitioners.

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CORAM : MILIND N. JADHAV, J.

DATE : JULY 09, 2024

P.C.:

- 1.** Mentioned. Not on Board. Taken on Board.
- 2.** Heard Mr. Gaikwad, learned Advocate for Petitioner / Applicant.
- 3.** Perused the praecipe dated 09.07.2024 and the Writ Petition.
- 4.** The Writ Petition assails order dated 06.03.2024 which has been passed by learned Trial Court below Exhibit-76 in Regular Civil Suit No.81 of 2015. Suit is filed by Plaintiff in the year 2015 for partition of the suit properties belonging to his father. One of the Defendant in his written statement took an objection that one Aababai who was sister of predecessor-in-title of the parties was not made a party to the suit. It was also contended by the said Defendant that said Aababai relinquished her share in favour of her brother.

5. Be that as it may, the present suit is filed by Plaintiff – Vitthal Sidhu Shinde for partition of the properties belonging to his father – Sidhu Shinde. Merely one of the Defendant stating in his written statement that one of the father's relative relinquished her share in favour of some of the parties is not enough and only on the basis of that statement in the written statement parties cannot be joined to the partition suit proceedings. This is the sum and substance considered by the learned Trial Court while considering the Application filed for seeking an amendment to the suit at a belated stage after the entire trial is almost over.

6. Learned Trial Court holds that the original Defendant – Shankar has raised the above objection in his written statement but after demise of the father, the legal heirs appeared in the suit proceedings. Even according to Plaintiffs merely because the said objection was raised, the Plaintiffs have filed Application below Exhibit-76 by themselves stating that it is a formal amendment and made in order to cure technical defects in the plaint. Learned Trial Court in paragraph No.5 has given cogent reason that amendment is sought at a belated stage after cross-examination of Plaintiff is over and hence the said formal amendment is rejected.

7. I find no reason to interfere with the order dated 06.03.2024 as the said order is correctly passed. The order dated 06.03.2024 is

sustained. Considering that the suit is of the year 2015, learned Trial Court is directed to determine Regular Civil Suit No.81 of 2015 as expeditiously as possible and in any event within a period of six months from today after hearing both the sides. Both parties are directed to co-operate with the learned Trial Court. Trial Court is directed not to give adjournments to the parties and to give adjournments only if they are utmost necessary due to any emergency or exigency. All contentions of both the parties are kept expressly open.

8. With the above directions, Writ Petition is disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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