

IN THE HIGH COURT OF JUDICATURE OF BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO. 1020 OF 2015

Dnyanoba S/o Dhondiba Shinde (Dhokar)
& others ... Petitioners

Versus

Shrikurshna S/oDnyanoba Shinde (Dhokar)
& another ... Respondents

.....
Mr. Sachin S.Deshmukh, Advocate for petitioners
.....

CORAM : RAVINDRA V. GHUGE, J.

DATED : 4th FEBRUARY , 2015

PER COURT :

1. The petitioners are the defendants in R.C.S. No. 110/2010. The suit is preferred for partition and separate possession. An application Exhibit 85 has been filed by the petitioners seeking issue No. 1, to be recast. Contention was that the plaintiff will have to prove that the suit property was ancestral property or joint family property. By the impugned order dated 01-12-2014, the Trial Court has rejected the said application.

2. Grievance of the petitioners is that the property will have to be segregated into an ancestral property and a joint family

property. Unless a specific issue is cast, there would be an ambiguity in the matter and the issue would not be adjudicated upon. With the distinction in the nature of the property, the Trial Court would be better assisted in adjudicating upon the said issue. Rejection of application Exhibit 85 will create a permanent deficiency in the Trial.

3. I have considered the submissions of the learned Advocate for the petitioners and I have gone through the petition paper book with his assistance. Issues were cast on 04-09-2013. An additional issue was cast on 01-12-2014. Application Exhibit 85 was filed on 18-10-2014. The petitioners submit that while casting an additional issue 1-A on 01-12-2014, the Trial Court should have cast an issue to the effect that the plaintiff should prove that the suit properties are ancestral and/or joint family properties.

4. It appears from the plaint that the plaintiff has not created a distinction between the property at issue. It is contended that the plaintiff is seeking partition and separate possession of the joint family property. Even the petitioners have not come out with a case of describing a portion of the property as ancestral and another portion as a joint family property. Had it been the case of the petitioners that one portion of the property needs to be

declared as an ancestral property, the burden would then lay on the petitioners/ defendants to prove that aspect.

5. The impugned order indicates that the Trial Court is proceeding on the premises that an ancestral property is always included in the term of joint family property which has a larger meaning. It is left open to the parties to lead evidence and as such it would be the choice of the parties to establish the suit property as being joint family property.

6. In the absence of any specific contention by the plaintiffs as well as the defendants as regards particular property being identified as an ancestral property, I do not find that the impugned order could be termed as perverse or erroneous.

7. The petition being devoid of merit is, therefore, dismissed.

(**RAVINDRA V. GHUGE, J.**)