

(1)

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

WRIT PETITION NO. 11926 OF 2015

Balasaheb s/o Tanajirao Gambhir,
Age: 36 years, Occu: Agri. & Business,
R/o. Opp. ITI College, AUSA Road,
Latur, Tal & District Latur

...PETITIONER
(Orig. Plaintiff)

VERSUS

1. Tanajirao S/o Pralhadrao Gambhir,
Age: 70 years, Occu: Agri.
2. Sau. Suman w/o Tanajirao Gambhir,
Age: 55 years, Occu: Household,
Both are residing at Op. ITI College,
AUSA Road, Latur, Tal. & District Latur
3. Sau. Sangita W/o Vyankatrao Patil,
Age: 45 years, Occu: Household & Service,
R/o. Renapur Naka, Ambejogai Road,
Latur, Tal & District Latur
4. Sau. Archana W/o Raghunath Tenkale,
Age: 43 years, Occu: Household & Agri.,
R/o 520, Kapil Vastu, Opp. Pratap Cinema,
Thane, District Thane
5. Sau. Kalpana W/o Dinesh Sonale,
Age: 40 years, Occu: Medical Practitioner,
R/o 3rd Cross Road, M.G. Road,
Tumkur, Tal. & Dist. Tumkur
(Karnataka State)
6. Sau. Suvarna W/o Gopesh Yadav,
Age: 26 years, Occu: Household,
R/o CIDCO, N-11, Aurangabad,
Tal. & District Aurangabad
7. Rahul S/o Tanajirao Gambhir,
Age: 25 years, Occu: Education,
R/o Opp. ITI College, AUSA Road,
Latur, Tal. & District Latur
8. Devidas S/o Madhavrao Kamble,
Age: 57 years, Occu: Labour,
R/o Umarga, Tal. & Dist. Latur

(2)

9. The State of Maharashtra,
Through District Collector,
Latur
10. Special Land Acquisition officer,
Minor Irrigation, Latur
11. The Executive Engineer,
Minor Irrigation Division at Latur,
Tal. & Dist. Latur

....RESPONDENTS
(Orig. Defendants)

Ms. Kavita Bhale, Advocate holding for Mr P. R. Katneshwarkar, Advocate
for petitioner;
Mr D. A. Mane, Advocate for respondents

CORAM : N.W. SAMBRE, J.
DATE : 11th December, 2015

ORAL ORDER :

In a suit for partition, bearing Special Civil Suit No.3 of 2012, the petitioner-plaintiff moved an application (Exh.112) for amendment in relation to the property, disclosed by the respondent no.1 in the written statement, which was filed in 2012. It is claimed by the petitioner that the said property was purchased by the respondent no.1 herein, out of earnings received from the joint family property and also his mother Pushpa. He would then urge that the said plot was mutated in the name of Pushpa and subsequent thereto, in the name of the respondents.

2. The application (Exh.112) came to be rejected by the Trial Court, by an order dated 5th September, 2015, by observing that the said property is a plot, which was self acquired property of respondent no.1.

(3)

3. While questioning the legality of the order impugned, learned Counsel appearing on behalf of the petitioner would urge that in a suit for partition and separate possession all the properties of the joint family are required to be placed in a common hotch-potch, so as to have appropriate distribution thereof. According to the learned Counsel, as at the time of filing of the suit, the property was not within the knowledge, it is upon filing of the written statement and upon appropriate inquiry, the same is sought to be inserted by way of amendment, by adding the subsequent purchaser of the same. Learned Counsel would then urge that the Trial Court has exceeded its jurisdiction by observing that the said property, which is sought to be introduced by way of amendment, is self-acquired property of respondent no.1.

4. Learned Counsel appearing on behalf of respondent no.1, while opposing the petition and supporting the order impugned, would urge that the plot in question is located in the housing society for the employees of Municipal Council, of which admittedly he is employee. He would then urge that except respondent no.1 no family member was is entitled for the plot in the said housing society and as such, the Court below was right in observing that it is self-acquired property of respondent no.1. He would then urge that the plot in question then was sold and an amount of Rs.9 Lacs was given to the present petitioner-plaintiff for starting his business, which fact was also before the Court below.

(4)

5. Having considered rival submissions, it is required to be noted that all the properties which are claimed to be joint family properties, are required to be formed to be a part of a suit for partition. If a property is left out of the claim for want of knowledge of the parties and same is sought to be inserted in the suit, such prayer cannot be brushed aside on the ground that the property appears to be self-acquired property, in absence of any cogent evidence to that effect. It is really premature for the Trial Court to observe, at the stage of deciding an application for amendment, that the property which is sought to be part of the claim, is self-acquired property of respondent no.1. In my opinion, if respondent no.1 claims that the property was his self-acquired property, it is always open for him to raise such defence before the Trial Court and it is expected of the Trial Court to deal with the same, after taking into account appropriate evidence to that effect brought before it.

6. For the foregoing reasons, in my opinion, the order impugned is not sustainable. Thus, the petition succeeds. I, therefore, pass following order :-

The order dated 5th September, 2015, passed by Civil Judge Senior Division, Latur, below Exh.112, in Special Civil Suit No.3 of 2012, is hereby set aside. The said application (Exh.112) stands allowed. The petitioner to carry out appropriate amendment within a period of four weeks from today.

(5)

Writ Petition stands allowed in above terms with no order as to costs.

(N.W. SAMBRE, J.)

amj