

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 677 OF 2015

JAIWANTA LAXIMAN MALI DIED THROUGH L.RS. AND OTHERS
VERSUS
YESHWANT LAXIMAN MALI AND OTHERS

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Advocate for Petitioners : Shri Shivprasad G.Jadhavar
Advocate for Respondent 2 : Shri Shoyab Shaikh

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CORAM : RAVINDRA V. GHUGE, J.
Dated: February 02, 2015
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PER COURT :-

1. I have heard the learned Advocates for the respective parties.
2. The petitioner is one of the defendants in RCS No.21 of 2001. The said suit is for partition and separate possession amongst blood relations. The properties involved are said to be ancestral properties of the deceased Laxman Mali.
3. Defendant - Gangabai, who is concerned with the cause of action herein, had passed away. She had two sons, namely, Namdeo and Dnyaneshwar. Dnyaneshwar had passed away. He had wife Laxmi, two sons, namely, Vijay and Ravi and two daughters, namely, Rekha and Puja. An application Exhibit 146 was filed by the plaintiff praying for addition of the parties and thereby, bring on record the wife of deceased Dnyaneshwar Smt. Laxmi and the two sons and two daughters. It was stated that inadvertently, the said parties were left out.

4. The petitioners opposed the said application in their capacity of being the legal heirs of deceased Jaywant Laxman Mali.

5. By the impugned order, dated 15.11.2014, application Exhibit 146 was allowed subject to costs of Rs.600/-.

6. The grievance of the petitioners is that the date of demise of Dnyaneshwar is known to his wife and their four children. Immediately from the date of death the plaintiff could have made an application for adding them as defendants. Because the litigating parties are inter se related, date of demise of Dnyaneshwar was known to the plaintiff. It is, therefore, stated that the trial Court could not have allowed the amendment as the application was time barred. The petitioners are aggrieved because the addition of the parties is likely to impact their shares in the property.

7. Shri Shaikh, learned Advocate has appeared on behalf of original plaintiff / respondent No.2. The contention is that since the suit is for partition and separate possession, no such party, who is connected with the ancestral property, can be left out. It is, therefore, stated that the trial Court has achieved the ends of justice by imposing costs upon the plaintiff. The said application could not have been rejected since the addition of the parties is not affected by any deliberate or intentional delay. The petitioners have not alleged any laches as regards the conduct of the plaintiff. The delay is not deliberate as the suit has been instituted by the

said plaintiff and she gains no advantage is delaying the matter. He, therefore, submits that no perversity or error can be found in the impugned order.

8. In the light of the controversy as is raised by the petitioners, it is undisputed that the suit is for partition and separate possession of the ancestral property. Even if some of the close relatives have been inadvertently left out and they are sought to be impleaded, so as to ensure that the rights of the any party are not frustrated, ends of justice can be said to have been achieved.

9. From the Say filed by the petitioners, dated 29.9.2014, for opposing application Exhibit 146, laches have not been attributed to the conduct of the plaintiffs. The cross-examination of the plaintiff No.2 Bhimrao has been concluded.

10. I, therefore, find that the petitioners may pray for submitting an additional reply upon addition of the parties since it is their contention that the addition of the said parties is likely to deplete the share of the petitioners. If such a request is made to the trial Court, the same can, therefore, be considered so as to ensure that ends of justice are met.

11. In the light of the above, merely because a second view is possible, I am not inclined to interfere with the impugned order dated 15.11.2014 by terming it to be perverse or erroneous.

12. With the above observations, this petition is disposed off.

(RAVINDRA V. GHUGE, J.)

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