

ingale

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3960 OF 2015

Sau.Rukmini Sudam Bankar and another ... Petitioners

Vs.

Bhima Nama Jagtap and others ... Respondents

Mr.Rajshekhar S.Alange, Advocate for Petitioners.

CORAM : R. G. KETKAR, J.
DATE : 15th JUNE, 2015

P.C. :

. Heard Mr.Rajshekhar S.Alange, learned Counsel for the petitioners.

2. By this petition under Article 227 of the Constitution of India, original defendants No. 9 & 10 have challenged the judgment and order dated 28/10/2014 passed by the learned Joint Civil Judge, Junior Division, Mohol below Exhibit 216 in Regular Civil Suit No. 93 of 1999. By that order, the learned trial Judge allowed the application and permitted original plaintiff to sue for the benefit of all persons so interested as per list Exhibit 7 in the subject matter of the suit. The learned trial Judge further directed that at the expenses of the plaintiff, notice to institution of the suit by public advertisement in a widely circulated daily newspaper be issued.

3. In support of this petition, Mr.Alange strenuously

contended that respondent No.1-plaintiff instituted suit for partition and separate possession. In paragraph 2 of the plaint, plaintiff asserted that plaintiff and Vitthal Gundi Jagtap, since deceased, Dada Gundi Jagtap, since deceased & Ms.Rukminibai Bapu Jagtap and Balu Sada, since deceased, are the co-sharers. He has instituted suit in a representative capacity on their behalf. Though in paragraph 4, plaintiff asserted that the persons named in the schedule enclosed along with the plaint are co-sharers, he did not obtain leave to sue in a representative capacity. The suit is now fixed for arguments and in fact, today also it is listed for arguments. The learned trial Judge has allowed the application Exhibit 216 filed by the plaintiff for leave to institute suit in a representative capacity. The said application is filed on 13/06/2014 and by the impugned order, the learned trial Judge has granted leave. He invited my attention to genealogy given by defendants No. 1, 3, 5 and 12 in the written statement and in particular, paragraph 7A thereof. He submitted that by comparing genealogy set out in paragraph 7A of the written statement with Exhibit 7 (schedule) enclosed along with the suit, these persons are not found in the genealogy set out in paragraph 7A. In other words, he submitted that the plaintiff has not disclosed how persons named in Exhibit 7 have same interest in the suit for partition. For all these reasons, he submitted that petition requires consideration.

4. I have considered the submissions advanced by

Mr. Alange. I have perused the material on record. As noted earlier, plaintiff has instituted suit for partition and separate possession. In paragraph 2 of the plaint, plaintiff asserted that Vitthal Gundi Jagtap, since deceased, Dada Gundi Jagtap, since deceased & Ms. Rukminibai Bapu Jagtap and Balu Sada, since deceased, are co-sharers. At the same time, in paragraph 4, it is set out that plaintiff has enclosed schedule showing names of co-sharers therein. The plaintiff has also sought leave to institute suit in a representative capacity for which he is ready and willing to bear expenses for issuing public notice. During the course of hearing, I made a query. Mr. Alange, upon taking instructions, stated that in pursuance of the impugned order, public notice was issued in a newspaper. Thus, in my opinion, the impugned order is already implemented and acted upon. It will, therefore, not be in the interest of justice, now, to interfere with the impugned order. The questions whether the persons named in Exhibit 7 have same interest in the subject matter of the suit as also the genealogy given by defendants No. 1, 3, 5 and 12 wherein the names of persons in Exhibit 7 do not find place are matter of trial. Keeping all the contentions of the parties open, in my opinion, this is not a fit case for invocation of powers under Article 227 of the Constitution of India. Hence, petition fails and the same is dismissed. Order accordingly.

(R. G. KETKAR, J.)