

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER NO. 52 OF 2015
WITH
CIVIL APPLICATION NO. 62 OF 2015 IN A.O. NO. 52 OF 2015**

Mohan D. Jadhav & Ors. ... Appellants/Applicants
Vs.
Keshav Hari Jadhav & Ors. ... Respondents

Mr. Nitin P. Deshpande i/b. Ms. Ashvini Ashok Takalkar, Advocate for the appellants/applicants.
Mr. G.S. Godbole i/b. Mr. Sumit S. Kothari, Advocate for respondent nos. 1, 2, 4 to 7.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **14th December, 2015**

P.C.:

This Appeal from Order is directed against the judgment and order dated 30th December, 2013 passed by the District Judge-I, Raigad Alibag in Appeal No. 140 of 2008 below Exhibit 30A. The present appellants have filed a suit for partition in respect of joint family property. The said suit was decreed and the learned trial Judge declared the suit property as joint family property and, therefore, it is to be divided between Dhondu Vitu and Hari Vitu and their Legal heirs 50%. Being aggrieved by the said judgment and order, an Appeal is preferred on the ground that the suit properties bearing Survey nos. 16, 18 and 19/2 were the exclusive properties of the respondents under section 32G and he has purchased the said lands under section 32G of the Bombay Tenancy and Agricultural Lands Act. 13 lands which are mentioned in the Mutation no. 344 are also

the properties not exclusively owned by Dhondu/plaintiffs but they are also joint family properties. The Appeal was heard by the learned District Judge and he has partly allowed the said Appeal thereby directing that the lands included in Mutation No. 344 are to be included as suit properties in the suit for partition in the plaint and the suit to proceed. The said order is under challenge by the plaintiffs/appellants.

2. The learned counsel Mr. Deshpande for the appellants has submitted that this Appeal from Order is filed against the order passed by the District Judge on Miscellaneous Application in Appeal and thereby the Appeal is remanded and disposed of. The substantial question of law raised by the appellants are as follows:

“Whether the Court has power to include any property suo motto and amend the plaint under Order 6 Rule 17 of Code of Civil Procedure when the plaintiffs are not willing to do so?

In support of his submissions, the learned counsel relied on the judgment of the Single Judge of Patna High Court in **Awadhendra Prasad Narayan Singh & Ors. vs. Raghubansmani Prasad Narayan Singh & Ors., reported in AIR 1979 Patna 50**. In the said suit, a partition was the issue and one property by name Rajgir House was not added in the plaint. In the said matter, the property was included in the suit after preliminary decree had been passed. Rajgir House was not the part of the preliminary decree and the dispute regarding Rajgir House had been adjudicated upon by the parties in the previous partition Suit No. 23 of 1941. Thus, in

the present matter, there is no such previous suit where there is adjudication in respect of properties mentioned in Mutation No. 344. No such preliminary decree had been passed.

3. This is a suit for partition, therefore, it is not necessary for the respondents to file a counter claim but their pleadings or objections in respect of the properties which are left out can be considered by the Court and accordingly the amendment can be suggested in order to have a full and final adjudication on the issue of the properties. Thus, the Court can direct the plaintiffs/appellants to add that property and amendment can be carried out to that extent in a suit for partition. Moreover, the respondents have raised this contention in the written statement and therefore the ground taken and reasoning given by the District Judge is correct and sound. Therefore, a question of law can be answered that in a suit for partition, the Court can direct such amendment in respect of properties if excluded. I maintain the order passed by the District Judge, Raigad-Alibag in clause nos. (2), (3), (4) and (5). Parties to appear before the learned Civil Judge Junior Division, Khalapur on 28th December, 2015.

4. Thus, the Appeal from Order is dismissed. Civil Application is also accordingly disposed of.

(MRIDULA BHATKAR, J.)