

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

921 WRIT PETITION NO. 5448 OF 2015

MAHARUDRA TRIYAMBAK BOLEGAVE THROUGH GPA  
RAMDAS TRIYAMBAK BOLEGAVE  
VERSUS  
BHAGIRATI VAIJANATH BOLEGAVEK, LR ANNARAO  
VAIJANATH BOLEGAVE  
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Shri. Anandsingh S. Bayas, Advocate, for petitioner.

Shri. S.M. Vibhute, Advocate, for respondent No.2.  
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**CORAM: T.V. NALAWADE, J.**

**DATE : 19<sup>th</sup> AUGUST 2016**

**ORDER:**

1) The petition is filed to challenge the order made by the learned Civil Judge, Junior Division, Nilanga on Exhibit 102 in Regular Civil Suit No.57/2009. Heard both sides.

2) The suit is filed by the present respondent Annarao Vaijnath for relief of declaration of ownership and injunction. It appears that one Apparao was the common ancestor of the parties and Apparao was succeeded by two sons Sambha and Vaijnath. Plaintiffs are

the successors of Vaijnath and defendant is successor of Sambha.

3) The defendant has contended that partition took place between Vaijnath and Nagarbai, widow of Sambha in the year 1979 and document of partition was prepared by them. It is the case of the defendant that on the basis of said partition mutations were made in favour of the parties in the revenue record and accordingly the parties are in possession. The plaintiffs are disputing the said partition.

4) The suit was filed in the year 2009 and in the year 2012 the defendants moved application for impounding of so called deed of partition. Learned Judge of the trial Court has rejected the application by observing that as the document is not registered, there is no question of impounding the document.

5) Learned counsel for the petitioner submitted that the aforesaid reason given by the trial Court cannot sustain in law. Though it can be said that the aforesaid

reason may not sustain in law, the fact remains that the defendant cannot be allowed to protract the things. When suit was filed in the year 2009, he filed application in the year 2012 and it can be said that he pressed the application in the year 2014 for impounding. The application is very vague in nature. Things are complicated and as both Vaijnath and Nagarbai are dead and it is denied that they were signatories to this document. Considering the stages which will be involved in admission of the document in evidence or in consideration of the document even for collateral purpose it can be said that it is clear attempt to protract the things. Learned counsel for the petitioner placed reliance on a case reported as **2008(2) Supreme 472 (Government of Andhra Pradesh v. P. Laxmi Devi)**. Facts and circumstances of each and every case are always different.

6) In Hindus partition can be oral also. If partition had taken place and Vaijnath and Nagarbai had given report to the revenue authority, the said record can be proved by the defendant to prove the partition. In view of

these circumstances, this Court holds that it is not desirable to us extraordinary power for setting aside the order made by the learned Judge of the trial Court. In the result, the petition stands dismissed.

Sd/-  
**(T.V. NALAWADE, J. )**

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