

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

WRIT PETITION NO. 5506 OF 2016

Maruti Bapu Nimbhore

..PETITIONER

VERSUS

Gorakhnath Nana Nimbhore and Others

..RESPONDENTS

....

Mr. V.P. Latange, Advocate for petitioner.

Mr. A.K. Gawali, Advocate for Respondent Nos.1, 2 and 4.

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CORAM : T.V. NALAWADE, J.

DATED : 23rd SEPTEMBER, 2016

ORDER :

1. The petition is filed for setting aside the order made on Exhibit 123 in Regular Civil Suit No. 46 of 2010. The said application was filed by the present petitioner seeking amendment under the provisions of Order 6 Rule 17 of the Civil Procedure Code.

2. The suit is filed for relief of declaration that Defendant Nos.1 and 2 have not become the owners due to mutation made in their favour on the basis of report given by Defendant No.3 – father of plaintiff. Other relief is claimed that plaintiff and Defendant No.3 being joint owners are entitled to get possession of the property from Defendant Nos.1 and 2. The Defendant Nos.1 and 2 are cousins of the plaintiff and it is the case of

the plaintiff that partition had taken place amongst Defendant No.3 on one side and Defendant Nos. 1 and 2 on the other side prior to year 1980 and so the property was of joint Hindu family of Defendant No.3 and plaintiff.

3. It appears that on 03rd March, 2010, on the next date of filing the suit, the said property came to be sold by Defendant No.1 to his own wife. The wife of Defendant No.1 is already added by making amendment in the suit and so the plaintiff can take possession from added defendant also.

4. If the plaintiff is able to prove that there was no legal transfer in favour of Defendant No.1 and 2, then he will succeed in everything. On the other hand if he fails to prove that case, he may not succeed in getting any relief in view of the relief claimed in the original suit. Instead of that plaintiff had prayed for permission to amend the matter and he wants declaration of following nature:

- (i) The plaintiff has undivided share alongwith Defendant No.3 in the suit property.
- (ii) Sale deed made in favour of wife of Defendant No.1 dated 03rd March, 2010 is illegal and that is not binding on plaintiff.

5. The aforesaid discussion shows that the amendment sought was actually unwarranted. If the plaintiff succeed in getting relief claimed in Clause 1 and 2, there will be no need of making any further contention or claiming any other relief. Thus the application is itself misconceived. There is no need to interfere in the order made by the Trial Court. Petition stands disposed of as dismissed.

(T.V. NALAWADE, J.)

SSD