

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

902 WRIT PETITION NO. 4074 OF 2016

RAMKRISHNA BABURAO SHINDE
VERSUS
JIJABAI MALHARE RAJGUDE AND OTHERS

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Advocate for Petitioner : Gaware Niteen V.
Advocate for Respondents : Dond Manoj A. for R/ 3

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CORAM : T.V. NALAWADE, J.
DATE : 16-09-2016.

ORDER :

1. The petition is filed to challenge the order made on exhibits-57 and 63 in R.C.A. 123 of 2004 which is pending in District Court, Ahmednagar. Both the sides are heard.
2. The appeal is filed against present petitioner and one Jijabai Malhari Rajgude. It is against the judgment and decree of R.C.S. No. 269 of 1979. The suit was filed by present petitioner and Jijabai Rajgude for relief of partition of separate possession. The present petitioner was the purchaser from Jijabai and it was the case of the Jijabai she has $\frac{1}{2}$ share in the suit property. The suit was decreed in favour of petitioner and Jijabai and the trial court has held that Jijabai is entitled to $\frac{1}{2}$ share in the suit property.
3. During pendency of the proceeding some portion of the property purchased by Ramkrushna was sold to Nemichand Malhari son of appellant no.1 Malhari. Malhari then filed *pursis* to inform to

the court that, he had no intention to prosecute the appeal. The decree is given by civil court against both Malhari and his brother Dnyandeo. In view of these circumstances, Dnyandeo filed application in the appeal and prayed for relief of transposing appellant no.1 Malhari to the array of respondents. The application at exhibit 63 was made only to make amendment in the prayer as in the previous application prayer was made to make him respondent no.3 and in application at exhibit 63 prayer is made to make him respondent no.4.

4. The appellate court has allowed the applications. Learned counsel for petitioner submitted that when Malhari had no intention to prosecute matter there was no necessity to transpose him from the array of appellant to the array of respondents. This submission is not at all acceptable. The suit was filed by one branch, Jijabai against the other branch consisting of two brother's of Malhari and Dnyandeo. Both were necessary parties to the partition suit. The Appeal is continuation of the said suit and so Malhari needs to remain in the appeal as necessary party. Even if it is presumed that the appeal was filed only by Dnyandeo, who wants to prosecute the appeal, he ought to have made Malhari as a party respondent in the appeal.

5. In view of the aforesaid circumstances, this court holds that no error is committed by the District Court in allowing the application in transposing Malhari to the array of respondents. The writ petition stands dismissed.

(T.V. NALAWADE)
JUDGE