

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

Writ Petition No.577 of 2016

* Gautam S/o. Balasaheb Garad,
Age 36 years,
Occupation : Agriculture,
R/o Jagji,
Taluka & District Osmanabad. .. **Petitioner.**

Versus

- 1) Savita w/o. Padmakar Pangarkar,
Age 20 years,
Occupation: Household,
R/o Jagji,
Taluka & District Osmanabad.
- 2) Jagannath s/o. Sakharam Garad,
Age 60 years,
Occupation : Agriculture,
R/o Jagji,
Taluka & District Osmanabad.
- 3) Dhanaji s/o. Jagannath Garad,
Age 60 years,
Occupation : Service,
R/o Jagji,
Taluka & District Osmanabad.
- 4) Chandrakala Jagannath Garad,
Age Major, Occupation: Household,
R/o Jagji,
Taluka & District Osmanabad. .. **Respondents.**

Shri. Pramod N. Mule, Advocate, for petitioner.

Shri. V.B. Deshmukh, Advocate, for respondent Nos.1 & 2.

CORAM: T.V. NALAWADE, J.

DATE : 31st AUGUST 2016

JUDGMENT:

1) Rule. Rule made returnable forthwith. By consent heard for final disposal.

2) The petition is filed by original defendant No.3 to challenge the order on Exhibit 84 in Regular Civil Suit No.313/2009 which is pending in the Court of the Civil Judge Senior Division Osmanabad. The suit is filed by respondent No.1, Savita for relief of partition and possession of her separate share and it is agricultural land. It is the case of the defendant No.3 that he has purchased this property from father of the plaintiff. Plaintiff is the daughter of father of the vendor and her father and his brother are defendants in the said suit. The cross-examination of the plaintiff is over and she has admitted in the cross-examination that the suit property was self acquired property of the first owner, defendant No.1. After giving such admission, application for amendment came to be filed at Exhibit 84 and the plaintiff

now wants to add one more property bearing Village Panchayat No.250 and now the plaintiff contends that this property is the ancestral property of defendant No.1 and in that she has the share. However, in the same application she has contended that this property is sold by defendant No.1 to one Vinod Pandurang Patil. Particulars of sale like year etc. are not given and further no relief at all is claimed as against Vinod Pandurang Patil. When suit is filed for partition by Hindu and there is contention that the Karta had sold the property and there was no necessity to sell the property, purchaser has right to show that the property was sold for legal necessity. In spite of these circumstances, plaintiff does not want to make Vinod Pandurang Patil as party defendant in the suit. In view of these circumstances, the trial Court cannot decree the suit in favour of the plaintiff in respect of the new property which she wants to add. It can be said that this is an attempt to protract the decision of the suit. In view of these circumstances this Court holds that the order made by the learned Judge of the trial Court cannot sustain in law. In the result, following order :-

3) The petition is allowed. The order made by the learned Civil Judge, Senior Division, Osmanabad on Exhibit 84 is hereby set aside. The application at Exhibit 84 stands rejected. Rule is made absolute in those terms.

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

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