

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

WRIT PETITION NO. 5618 OF 2016

Bhagwan Sitaram Kale and Others ..PETITIONERS

VERSUS

Laxmibai Marotrao Kale and Another ..RESPONDENTS

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Mr. P.N. Kalani, Advocate for petitioners.

Mr. S.N. Kendre, A.G.P., Advocate for Respondent NO.2.

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CORAM : T.V. NALAWADE, J.

DATED : 21st SEPTEMBER, 2016

ORDER :

1. The petition is filed to challenge the order made on Exhibit 97 which was filed in R.C.S. No. 375 of 2013 pending in the Court of Civil Judge, Senior Division, Parbhani. The application was moved by the defendant/present petitioner for framing additional issue. It is the case of the defendant/present petitioner that the properties like Gut No. 168 and 407 were also owned by the joint family but they were sold long back and they are not included in the suit which is filed for partition. The defendants/present petitioners wanted one issue like “whether the suit is bad for non-inclusion of Gut No. 168 and 407 of village Dhanora Kale, Tahashil Purna and for non joinder of purchaser of the property in the suit”. This application was opposed by the plaintiff.

2. The learned Judge of the Trial Court has considered the provision of Order 14 Rule (i) of the Code of Civil Procedure and in view of the rival contentions, it is observed that the property which was sold by the husband of plaintiff cannot be included in the suit as apparently it is the case of the plaintiff that the property was allotted to the share of husband of plaintiff i.e. Marotrao. In any case, the rival contentions mentioned in the order show that the sale deeds were executed 1990-91 and the suit came to be filed in the year 2013. The learned Counsel for defendants submitted that to defendant also some portion is sold.

3. In view of these circumstances and the dates of said transactions, this Court finds that the Trial Court has not committed any error in rejecting the application. There is no need to issue notice to other side. In the result, the petition stands dismissed.

(T.V. NALAWADE, J.)

SSD