

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

919 WRIT PETITION NO. 8442 OF 2015

FULABAI VAIJANATH HADAMALKE AND ANOTHERS

VERSUS

PRASAD@ SHIVPRASAD MOTIRAM MIRAJGAVE DIED THROUGH LRS.LALITA

PRASAD@ SHIVPRASAD M

...

Advocate for Petitioners : Mr. Ashtekar R.K.

Advocate for respondents 1 to 4: Mr. M. P. Kale

CORAM : V. K. JADHAV, J.

DATE : 20th January, 2016

PER COURT :

1. Heard finally with the consent of the parties at admission stage.

2. The petitioners are the original plaintiffs in RCS No.122/2010 filed before the Civil Judge, Junior Division, Ahmedpur for the relief of partition and separate possession. During the pendency of the suit, the petitioners/orig. plaintiffs have filed Application at Exh.98 for addition of the parties. The learned Judge of the trial court, by the impugned order dated 24.04.2015, passed below Exh. 98 in RCS No.122/2010, rejected the said application.

3. Learned counsel for the petitioners submits that the trial Court has rejected the said application solely on the ground that even though the petitioners have

knowledge about the said persons, the application came to be moved for addition of party after lapse of eight months. The learned counsel further submits that the respondents original defendants have admitted the relations between the parties. They have objected the said application Exh.98 only on the ground that the petitioners have knowledge about the same when the respondents/ defendants filed written statement, raising point about non joinder of necessary party.

4. The suit is instituted for partition and separate possession and in view of that, the persons named in the application Exh. 98 are the necessary parties. Hence following order:

O R D E R

- i. Writ petition is hereby allowed.
- ii. The order dated 24.04.2015 passed below Exh. 98 in RCS No. 122/2010 is hereby quashed and set aside.
- iii. Application Exh. 98 in RCS No. 122/2010 is hereby allowed.

5. Writ petition is accordingly disposed of. No order as to costs.

(V. K. JADHAV, J.)

JPC