

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

46 WRIT PETITION NO. 8036 OF 2016

**VIJAY PURUSHOTTAM PATIL AND OTHERS
VERSUS
YAMUNA USHA KHANDU PATIL**

Shri. Amit S. Savale, Advocate, for petitioners.

CORAM: T.V. NALAWADE, J.

DATE : 16th AUGUST 2016

ORDER:

1) The petition is filed to challenge the order made by the learned Judge of the trial Court before whom there are two suits, one filed by the present petitioners and the other filed by respondent. Respondent has fled suit for relief of declaration and the present petitioner has filed suit for partition. It is the case of the petitioner that he is adopted and due to this relation he is entitled to have share in all the properties. This adoption is disputed by the other side and some transfers made by the present petitioner are challenged. In view of these circumstances, this Court has already directed the trial Court to see that both the matters are decided simultaneously as they are connected with each other.

2) In view of aforesaid rival contentions, the trial Court has directed the present petitioner, defendant of the first suit filed for relief of declaration, to start with his evidence.

3) Learned counsel for the petitioner, submitted that in view of provision of Order XVIII Rule 1 of the Civil Procedure Code it was not proper on the part of the trial Court to direct the present petitioner to lead evidence first. This submission is not at all acceptable. Learned counsel placed reliance on a case reported as **2001(4) Mh.L.J. 112 (Haran Bidi Suppliers v. V.M. & Co.)** in this regard.

4) Learned counsel for the petitioner, on the basis of the observations in the reported case, submitted that when there are many issues, initial burden will be on the plaintiff and so plaintiff of the first suit needs to start with the evidence. In the present matter the suit filed for partition has larger scope as against the suit filed for relief in respect of some declaration.

5) If the present petitioner fails to prove that he was adopted by the predecessor-in-title of the respondent, he will not get anything. In view of these circumstances, this Court holds that the trial Court has not committed any error in giving such direction. There are no merits in the present matter. The writ petition is dismissed.

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

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