

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

Writ Petition No.7676 of 2016

- 1) Prakash s/o Ananda Dhoke,
Age 56 years,
Occupation : Agriculture.
- 2) Shamrao s/o Ananda Dhoke,
Age 51 years,
Occupation : Agriculture.
- 3) Eknath s/o Ananda Dhoke,
Age 46 years,
Occupation : Agriculture.
- 4) Shobhabai w/o Prakash Dhoke
Age 51 years,
Occupation: Agriculture & Household
- 5) Vijaymala w/o Eknath Dhoke,
Age 41 years,
Occupation: Agriculture & Household
- 6) Kalubai w/o Ananda Dhoke,
Age 76 years,
Occupation: Agriculture & Household

All R/o Digrus, Taluka Jintur,
District Parbhani.

.. Petitioners.

Versus

- * Uttam s/o Ananda Dhoke,
Age 61 years,
Occupation : Agriculture,
R/o Digrus, Taluka Jintur,
District Parbhani.

.. Respondents.

Shri. Sushant C. Yeramwar, Advocate, for petitioners.

Shri. P.B. Salunke, Advocate, for respondent.

CORAM: T.V. NALAWADE, J.

DATE : 1st SEPTEMBER 2016

JUDGMENT:

1) Rule. Rule made returnable forthwith. Heard for final disposal by consent.

2) The petition is filed to challenge the orders made below Exhibit 129 and Exhibit 130 in Regular Civil Suit No.104/2010 which is pending in the Court of the Civil Judge, Junior Division, Jintur. The suit was filed for relief of injunction by Uttam and in the said suit present petitioners have filed counter claim. The suit is dismissed for default and the defendants are prosecuting the counter claim.

3) At Exhibit 130 application was moved on behalf of defendant No.2 for impounding the document titled as "consent document" and at Exhibit 129 the application

was filed by defendant Nos.1 to 6 for permission to lead additional evidence. The evidence was already closed by the defendants and the defendants now want to examine one more witness on aforesaid document, "consent document".

4) It appears that in the past application at Exhibit 96 was filed for the same relief which is claimed in Exhibit 130 and the application was rejected. On one hand, the defendants are contending that under the consent document they got the property and the property was joint Hindu family property and on the other hand they want the Court to impound the document and they are indirectly contending that this document amounts to the document transferring the property. In view of nature of pleadings in the counter claim it is up to the defendants to prove that it is joint Hindu family property and for that it is not necessary to impound the document if they are able to show that this document is memorandum of partition. On the other hand, if the trial Court comes to the conclusion that this document is a deed of partition then in that case there will be no question of impounding as

such document was required to be registered. In view of these circumstances, there is no possibility of interference in the order made by the trial Court on Exhibit 130.

5) So far as the application at Exhibit 129 is concerned, it can be said that the defendants want to lead more evidence to prove the fact that the property was the joint Hindu family property and in partition some portion of the suit property is given to the defendants. For that they want to examine one more witness who has signed on the aforesaid document. No prejudice will be caused to the original plaintiff if such permission is given as there will be opportunity to cross examine that witness also.

6) In the result, the petition is partly allowed. Relief claimed in respect of Exhibit 130 and the order passed thereon is refused. But the other relief in respect of order passed on Exhibit 129 is granted. The said order passed by the trial Court is hereby set aside and the application at Exhibit 129 is allowed. Permission is given to examine witness mentioned in that application. This order is subject to payment of cost of Rs.5000/- (Rupees

Five Thousand only) by the defendants to the plaintiff. The amount is to be deposited in the trial Court. Rule is made absolute in the aforesaid terms.

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

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