IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9470 OF 2015

PRAYAGBAI EKNATH DHAKANE AND ANOTHER
VERSUS
MALHARI BAPU BADE AND OTHERS
...
Advocate for Petitioners : Mr S S Bora
Advocate for Respondents 1-4 : Mr K A Khole &
D.K.Dagarkhair
...
CORAM : V.K. JADHAV, J.
Dated: February 24, 2016
...

PER COURT :-

1. The petitioners are the original plaintiffs instituted a suit bearing Regular Civil Suit No.114 of 2008 for partition and separate possession of the agricultural land. During the pendency of the suit, the petitioners-plaintiffs had filed an application Exh.138 under Order 1 Rule 10 of the Civil Procedure Code to add the defendant no.8 as party. The learned Civil Judge (J.D.) Shirur Kasar, by impugned order dated 21.7.2015 rejected the said application Exh.138. Hence, this writ petition.

2. Learned counsel for the petitioners submits that, during the pendency of the suit, on 19.10.2012 the

defendant no.1 alienated the land gat no.614 admeasuring 6R out of the suit property to one Madhukar Dadaba Bade. Learned counsel submits that, defendant no.1 is not the owner of the suit property. Learned counsel submits that, therefore, it was necessary in the interest of justice to add said Madhukar Dadaba Bade, as party to the suit. Learned counsel submits that, the Trial Court has rejected the application merely on the ground that the matter is more than eight years old and same is in the target cases of the old matters.

3. Learned counsel appearing for contesting respondents/original defendants no. 1 to 4 submits that, the petitioners-plaintiffs were knowing about the execution of the said sale deed since beginning. Learned counsel submits that, when the suit was posted for final hearing, the petitioners-plaintiffs had filed the application at Exh.138. Learned counsel submits that, the trial court has rightly rejected the application at Exh.138 as filed belatedly when the suit was posted for final hearing. Learned counsel submits that, there is no

substance in the writ petition and, writ petition is liable to be dismissed.

4. Admittedly, during the pendency of the suit, defendant no.1 has alienated the land out of the suit property under the registered sale deed to one Madhukar Dadaba Bade. In view of this, the petitioners-plaintiffs have rightly filed the application Exh.138 though belatedly. Said Madhukar Dadaba Bade is necessary party for the just adjudication of the matter. The Trial Court has rejected the application Exh.138 mainly on the ground that the suit is more than eight years old and the same is in target cases of old matters. In view of the above discussion, following order is passed.

ORDER

I. Writ Petition is hereby allowed.

II. The order dated 21.7.2015 passed by the learned Civil Judge (J.D.) Shirur Kasar, District Beed below Exh.138 in Regular Civil Suit No.114 of 2008 is hereby quashed and set aside.

III. Application Exh.138 is hereby allowed in terms of its prayer clause.

IV. The Trial Court shall dispose of the Regular Civil Suit No.114 of 2008, expeditiously and preferably within a period of SIX MONTHS from the date of this order.

V. Writ Petition is disposed of accordingly.

VI. In the circumstances, there shall be no order as to costs.

(V.K. JADHAV, J.)

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aaa/-