

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10237 OF 2015

USHA KANIF MANE
VERSUS
MALANBAI SAHEBRAO DALIMBKAR AND OTHERS

...
Advocate for Petitioner : Mr. Bide Dnyaneshwar A
Advocate for Respondents 1 to 7: Mr. A.Y. Pandule
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CORAM : V. K. JADHAV, J.
DATED : 4th FEBRUARY, 2016

PER COURT:-

1. By consent of learned counsel for the parties, heard finally.
2. The petitioner is original plaintiff instituted a suit for partition and separate possession. During pendency of suit, the petitioner-plaintiff has filed an application Exh.5 for issuance of temporary injunction. The learned Judge of the trial court by order dated 9.4.2013 rejected the said application Exh.5. Being aggrieved by the order passed below Exh.5, the petitioner plaintiff has preferred Misc. Civil Appeal No. 41 of 2013 before the District Court. Meanwhile, the original suit came to be rejected by the trial court and only after direction of this Court, the suit is restored to its original position. The learned Ad-hoc District Judge-2, by its impugned order dated 16.7.2015 also dismissed the appeal and confirmed the order passed by the trial court below Exh.5. Hence, this writ petition.

3. Learned counsel for the petitioner submits that there are no documents to support the theory of oral partition. Even though this Court while disposing of writ petition No. 5114 of 2014 has recorded the statement of respondents-defendants that the defendants have no objection if the petitioner restricts her suit only to the extent of ancestral property, the same is not considered by the learned District Judge-2 while dismissing the Misc. Civil Appeal.

4. The learned counsel for the respondents submits that the petitioner-plaintiff's marriage was performed prior to 26 years. She has no right to ask share in the self acquired property of her father. Learned counsel submits that partition of the property of deceased father of the petitioner took place on 25.10.1996. It has also pleaded that most of the properties are self acquired properties of the defendants. Learned counsel submits that considering the same, the trial court has rightly rejected application Exh.5 and learned Ad-hoc District Judge-2, has dismissed the appeal by confirming the order passed by the trial court below Exh.5.

5. It is true that by order of this Court, the petitioner's suit is now restricted to the extent of ancestral property, however, the respondents-defendants have come with specific pleading that during the life time of father of the petitioner, partition took place on

25.10.1996. Admittedly, the petitioner-plaintiff got married 26 years back. It has also pleaded by the defendants that the defendants are in the employment and and they have got independent source of income. There is pleading to that effect and prima facie it appears that most of the property is self acquired property of the defendants.

6. In the light of these circumstances, I do not find any fault in the impugned order passed by the trial court and confirmed by the appellate court. There is no substance in the writ petition. Writ petition is thus liable to dismissed and it is accordingly dismissed. No costs.

(V. K. JADHAV, J.)

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