

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

3 WRIT PETITION NO. 9636 OF 2016

KUNDLIK RATHOBA CHAVAN AND OTHERS
VERSUS
BHAMABAI SITARAM GAWADE AND OTHERS

Shri. V.P. Latange, Advocate, for petitioners.

CORAM: T.V. NALAWADE, J.

DATE : 5 DECEMBER 2016

ORDER:

1) The petition is filed to challenge the order made on Exhibit 42 in Regular Civil Suit No.387/2012 pending in the Court of the Civil Judge, Junior Division, Shrigonda. Heard learned counsel for the petitioners.

2) Respondent No.1. Bhamabai and respondent No.2 - Padma @ Padmabai have filed the suit for partition of Hindu joint family properties against present petitioners, brothers. They have contended that the suit properties are the ancestral and joint Hindu family properties of plaintiffs and defendants.

3) Present petitioners took defence in the first written statement that after the death of their father, Raghoba, names of all the heirs of Raghoba were entered in the revenue record and the partition took place after the death of Raghoba amongst plaintiffs and defendants. Present petitioners also contended that in the year 2002 other two sisters, like defendant Nos.8 and 9 relinquished their rights by signing on affidavit made before the Tahsildar in favour of other defendants. They contended that as partition has taken place and it was not challenged by the plaintiffs, they are not entitled to get any share. Now by making amendment these defendants want to contend that there was total ouster of the plaintiffs from the suit properties.

4) On one hand, in the previous written statement the defendants had contended that names of the plaintiffs were entered as legal heirs of Raghoba in the revenue record and they have also contended that partition had taken place when there is no such record and they had contended that two sisters had relinquished their rights in the year 2002 when the suit was filed in the year 2012; on

the other hand, now they want to contend that the plaintiffs were totally ousted from the suit properties and so the defendants have become the owner due to adverse possession. Thus, after so many years of filing written statement, the defendants want to take totally inconsistent stand. It is clear that, only to protract the decision of the suit they want to amend the written statement. There is no need even to issue notice to the plaintiffs. The writ petition is dismissed.

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

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