

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

Writ Petition No. 10726 of 2016

Momin Abdul Mannan s/o Abdul Raheman
And Others. **.. Petitioners.**

Versus

Farukh Begum w/o Abdul Rashid. **.. Respondent.**

Shri. Mandar Deshmukh, Advocate, holding for Shri.
Pramod N. Mule & Shri. Shrigopal G. Dodya, Advocates,
for petitioners.

CORAM: T.V. NALAWADE, J.

DATE : 5 DECEMBER 2016

ORDER:

1) The petition is filed to challenge the order made on Exhibit 19 in Regular Civil Suit No.244/2015 presently pending in the Court of the Civil Judge, Junior Division, Majalgaon. Heard learned counsel for the petitioners.

2) Respondent Smt. Farukh Begum has filed the suit for partition of the property like Survey No.478 measuring 27.10 acres and Survey No.450/E admeasuring 3 acres 12 gunthas. Present petitioner Nos.1 to 4 are brothers of the plaintiff and the parties are Muslim.

3) It is the case of the plaintiff that Survey No.478 was owned by her father and he died in the year 1979. It is her case that, the second property was purchased by her father in the names of defendant Nos.1 to 4 and at the time of purchasing the property defendant No.4 was minor and he was not having any source of income. It is her case that as the properties were belonging to her father she has share in the property.

4) The petitioners have taken defence that after the death of their father mutation was made in the record of property and the names of defendant Nos.1 to 4 were entered in the revenue record in the year 1980 and the name of the plaintiff was not entered. It is their contention that the other property was purchased by defendant Nos.1 to 4 and it is their property and the plaintiff has no share in the property.

5) In the application at Exhibit 19 the defendants contended that the suit of the plaintiff is barred due to law of limitation. They also contended that the plaintiff has relinquished her right in the suit property as provided in Muslim law.

6) The nature of the contention is sufficient to infer that there is no document of relinquishment with the defendants, petitioners. In Muslim law as residuary the sister is entitled to have her share in the property. After the death of father, the heirs left behind become joint owners of the property. In view of this circumstance it is not possible to accept the contention that at the out set the suit needs to be dismissed on the ground of limitation. Only because mutation was made in favour of the brothers only that does not mean that the sister ceases to become owner of her share as residuary in the property. The trial Court has rightly held that the issue of limitation is to be decided on the basis of evidence. In this view of the matter it cannot be said that preliminary issue needs to be framed. In the result, the petition stands dismissed.

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

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