

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

30 WRIT PETITION NO. 1102 OF 2015

HEMLATA BHAGWANRAO LAD (YADAV) AND OTHERS

VERSUS

BHAGWANRAO DEVRAO LAD (YADAV), LRS PADMINIBAI AND OTHERS

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Advocate for Petitioners : Mr. Milind M. Patil Beedkar

CORAM : V. K. JADHAV, J.**DATE : 6th January, 2016****PER COURT :**

1. The petitioners who are original plaintiffs have instituted the suit for recovery of possession by way of partition to the extent of 1/4th each along with relief of perpetual injunction against the respondent Nos. 1/1 to 1/3. Initially, the suit was filed the petitioners/ original plaintiffs against the defendant Bhagwanrao Devrao Lad(Yadav) alone who expired during the pendency of the suit.

2. During the pendency of the suit (RCS 30/2011), present respondent Nos. 2 to 4 have filed an application at Exh. 88 for adding them in the said suit as party defendants. Respondents 2 to 4 are the real sisters of deceased Bhagwanrao and according to them, since their father Devrao was having specific share in the properties, they are necessary party to the proceedings.

3. The learned Judge of the trial Court has allowed the said application Exh.88 and has directed the petitioners/ original plaintiffs to add respondents Nos.2 to 4 as defendants in the suit. Hence this petition.

4. Learned counsel for the petitioners submits that respondent Nos. 2 to 4 herein are required to file suit for general partition in respect of the properties of late Devrao. So far as RCS No. 30/2011 is concerned, the said suit pertains to properties owned and possessed by Bhagwan, which was received by him by way of partition between him and his brother Kishanrao. Since deceased Bhagwanrao has neglected them, the original plaintiffs i.e. petitioner No.3 who happened to be widow of deceased Bhagwanrao and petitioner Nos. 1 and 2 who are daughters, have instituted the present Suit No. 31/2011.

5. None appears for the respondents though duly served.

6. It appears that the present R.S.C. No.30/2011 is pertaining to the properties of deceased Bhagwanrao which was received by him by way of partition between him and his brother Kishanrao. The petitioners/original

plaintiffs have approached the Court with the pleadings that the deceased defendant Bhagwanrao was addicted to bad vice and neglected the petitioners/plaintiffs and therefore, the suit is instituted by them for recovery of possession of the property by partition of 1/4th share each. Thus, it appears that RCS No. 31/2011 is not relating to the entire properties of Devrao. In this backdrop, respondents Nos. 2 to 4 are certainly required to file suit for general partition in respect of the properties of late Devrao. It appears that the learned Judge of the Trial Court has not considered the same and has passed the impugned order. In view of this, following order is passed:

O R D E R

- i. Writ petition is hereby allowed.
- ii. The impugned order dated 27.10.2014 passed below Exh.88 in R.C.S. No.30/2011 by the 2nd Joint Civil Judge, Senior Division, Parbhani hereby quashed and set aside.
- iii. Application at Exhibit 88 in R.C.S. No.30/2011 is hereby rejected.
- iv. No order as to costs.

(V. K. JADHAV, J.)

JPC