

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

965 WRIT PETITION NO. 11748 OF 2016

RATANGIR MANGIR GIRI DIED LRS JANABAI RATANGIR GIRI AND
OTHERS
VERSUS

SUBHADRABAI MAROTI GIRI AND OTHERS

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Advocate for Petitioners : Kale Gopal D.
Advocate for Respondents 1 to 4 : Gadhe Ganesh A.

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CORAM : T.V. NALAWADE, J.

DATED : 15th December, 2016.

ORDER :

1. The petition is filed to challenge the order made on Exh. 41 in Regular Civil Appeal No. 56/2008. The appeal is pending in the Court of Ad-hoc District Judge-1, Nanded. Both the sides are heard.

2. The appeal is filed by the present petitioners against the judgment and decree of partition given in favour of present respondents, daughters of Dattagir and stand was taken by the present petitioners that Anandgir, who was son of Ratnagir was adopted by Dattagir, father of plaintiffs. They had also contended that during his lifetime, Dattagir had given application for effecting mutation and accordingly, 5 to 6 months prior to death of Dattagir, mutation was effected in favour of

Anandgir in the revenue record. This contention is considered by the Trial Court. The Trial Court has dismissed this claim by observing that the fact of adoption is not proved.

3. It cannot be said that the mutation was not within the knowledge of the petitioners as in the written statement itself they had made mention about this mutation. They want to produce copy of mutation under the provisions of Order 41, Rule 27 of Civil Procedure Code and they want to produced other record like caste certificate to show that Anandgir obtained caste certificate in the year 2000 by showing that Dattagir was his father.

4. It appears that in the year 1974-75 Dattagir died. Dattagir had left behind his widow and three daughters. The submissions made show that in the past even widow of Dattagir had filed suit against the present petitioners, but unfortunately both the sides could not show plaint of that suit. In any case, it can be said that the contention, the defendants now want to make by producing the record of caste certificate and mutation was made in the Trial Court also and after considering that record, Trial Court has given decision that factum of adoption is not proved.

5. The learned counsel for petitioners placed reliance on the case reported as **(2015) 1 Supreme Court Cases 677 [Wadi Vs. Amilal and Ors.]**. The Apex Court has laid down that what is important for consideration under the aforesaid provision is the need of the evidence on the record which can enable the Court to pronounce the judgment. There cannot be dispute over this proposition. Such contention was already made before the Trial Court and that contention is dealt with the by Trial Court.

6. In view of these circumstances, it cannot be said that only copy of mutation will change the fate of the matter. The Trial Court has discussed the oral evidence of Ratnagir, natural father of Anandgir. One brother of Ratnagir was also examined. But the Trial Court has not believed these two witnesses. Thus, the appeal will be decided on the basis of appreciation of the evidence available for proving the factum of adoption. This Court holds that filing of the aforesaid application, that too on 7.12.2015 when the appeal was filed in the year 2008 was nothing but an attempt to protract the decision of the appeal. When the Appellate Court rejected the application on 18.3.2016, present proceeding came to be filed on 21.11.2016. These circumstances speak sufficient about the approach of the

present petitioners towards this litigation. Dattagir did not leave behind son. It can be said that by hook or crook, the petitioners want to deprive the plaintiffs, daughters of Dattagir from getting the fruits of the decree. There is no possibility of interference in the order made by the District Court. The petition stands dismissed. These observations are for the purpose of present proceeding only.

[T.V. NALAWADE, J.]

SSC/