

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

WRIT PETITION NO. 144 OF 2016

Vimalbai W/o Shivrao Pawar,
Age: 63 Yeas, Occ: Household & Agriculture,
R/o. Subhashnagar, Kopargaon,
Tq. Kopargaon, Dist. Ahmednagar.**Petitioner**

Versus

- 1) Shri. Ramesh Bhagaji Dunble,
Age: 55 years, Occ: Agriculture,
R/o. Subhashnagar, Kopargaon,
Tq. Kopargaon, Dist. Ahmednagar.
- 2) Shri. Dilip Sakharam Dunble,
Age: 39 years, Occ: Agriculture,
R/o. as above.
- 3) Shri. Ashok Sakharam Dunble,
Age: 37 years, Occ: Agriculture,
R/o. as above.
- 4) Bhagubai Sanjay Zalte,
Age: 35 years, Occ: Household,
R/o. as above.
- 5) Mainabai Sanjay Zalte,
Age: 33 years, Occ: Household,
R/o. as above.
- 6) Anjanabai Sakharam Dunble,
Age: 65 years, Occ: Household,
R/o. as above.
- 7) Shri. Dattu Kachru Pagare,
Age: 45 years, Occ: Service,
R/o. as above.
- 8) Shri. Pramod Ganesh Wagh,
Age: Major, Service,

R/o. Laxminagar, Kopargaon,
Tq. Kopargaon, Dist. Ahmednagar.

- 9) Ganesh Bhikaji Wagh,
Age: Major, Occ: Service,
R/o. as above.
- 10) Sunita Vijay Avhad,
Age: Major, Occ: Household,
R/o. as above.

...Respondents.

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Advocate for Petitioner : Kazi S.S.
Advocate for Respondents 1 & 2 : S.B. Kadu
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CORAM : T.V. NALAWADE, J.
DATED : 2nd September, 2016.

JUDGMENT :

1) Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2) The petition is filed to challenge the order made by the learned Civil Judge, Junior Division, Kopargaon on Exh. 117 in Regular Civil Suit No. 264/2010. Both the sides are heard.

3) The suit is filed by present petitioner Smt. Vimlabai against her brothers and other members of the Joint Hindu Family. It is her case that fraud was played against her in the previous suit bearing Special Civil Suit No. 64/1993, which was disposed of due to compromise between the parties. It is her

case that though it was shown that settlement was done, no property was given to her and her signatures were obtained on compromise document. In that suit, the properties from Jeur Patoda, Tahsil Kopargaon and house properties within municipal limits of Kopargaon were the suit properties. So, the relief is claimed for setting aside the decree to that extent given against her in the previous suit.

4) In the present suit, plaintiff has prayed for relief of partition in respect of two properties like Gat Nos. 11 and 130 situated at Mahalkhede. These are additional properties which were not there in the suit of 1993. It appears that this suit is filed in the Court of Civil Judge, Junior Division, Kopargaon and one more suit is filed by the present petitioner in the Court from Yewala bearing Regular Civil Suit No. 4/2013. It is also for the relief of partition and in that suit, she has prayed the relief in respect of three more properties like Gat Nos. 45, 41, 35 situated at Mahalkhede, Tahsil Yawal. In addition to these properties, aforesaid two properties from Mahalkheda like Gat Nos. 11 and 13 are also included in the suit filed in the Court of Yewala.

5) In view of the aforesaid circumstances, plaintiff had prayed for allowing to amend the proceeding bearing R.C.S. No.

264/10 as she wants to add the three properties like Gat No. 45, 41, 35 situated at Mahalkhede in this suit and she wants to withdraw the suit which is filed at Yewala. The learned Judge of the Trial Court has observed that the previous suit was disposed of in the year 1993 and so, there will be question of limitation. It is already observed that in the suit of 1993, these properties were not included. Parties are Hindus and so, in such a case, specific pleading of both the sides need to be considered for deciding the point of limitation and strait away before amendment such observations cannot be made. It is clear that the plaintiff, who is a lady, is not properly advised and the two advocates from two different stations filed two suits as mentioned above. Due to these circumstances there will be complications as subsequently instituted suit atleast in respect of two properties like Gat No. 11 and 130 will have to be stayed in view of the provisions of section 10 of Civil Procedure Code. All these complications can be avoided by allowing the plaintiff to make amendment to include aforesaid three properties in R.C.S. No. 264/2010 and she can be allowed to withdraw the other suit bearing R.C.S. No. 4/2013 filed at Yewala. No prejudice will be caused to other side in view of the aforesaid facts and circumstances.

6) In the result, petition is allowed. The order made by the learned Judge of the Trial Court is hereby set aside. Application filed for amendment is allowed. Statement is made by the learned counsel for the petitioner that he will be withdrawing the suit filed at Yewala after making amendment in R.C.S. No. 264/2010. It will be open to the defendant to file additional written statement after making amendment in the plaint.

Rule is made absolute in aforesaid terms.

Authenticated copy is allowed.

[T.V. NALAWADE, J.]

SSC/