

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3954 OF 2017

Narayan s/o Ratanrao Raner
Age : 58 years, Occu: Service,
R/o Ekta Nagar, Pathri
Tq. Pathri, Dist. Parbhani.

...Petitioner
(Ori. Plaintiff)

Versus

1. Govind s/o. Ratanrao Raner (Deleted)
Age : 68 years, Occu: pensioner & Agril.
R/o. Panchawati Colony, Manwat,
Tq. Manwat, Dist. Parbhani
2. Narshing s/o Ratanrao Raner (Deleted)
Age : 66 years, Occu: Agril.
R/o. Rampuri (Kh.), Tq. Pathri,
Dist. Parbhani.
3. Shrihari s/o Ratanrao Raner (Deleted)
Age : 64 years, Occu: Agril.
R/o. Panchwati Colony, Manwat
Tq. Manwat, Dist. Parbhani.
4. Shivaji s/o Ratanrao Raner
Age : 56 years, Occu: Agril.
R/o. Rampuri (kh.) Tq. Pathri,
Dist. Parbhani.
5. Kaveri w/o Shivaji Raner
Age : 50 years, Occu: Agril. & Household
R/o. Rampuri (kh.), Tq. Pathri,
Dist. Parbhani.
6. Nirmala w/o Shrihari Raner
Age : 57 years, Occu: Agril & Household
R/o Panchawati Colony, Manwat,
Tq. Manwat, Dist. Parbhani.

7. Shewantabai w/o Rangnathrao Kaldade
Age : 67 years, Occu: Household,
R/o. Brahmangaon, Tq. & Dist. Parbhani.

8. Dwarkabai w/o Bhagwantrao take
Age : 62 years, Occu: Household,
R/o Chikalthana, Tq. Sailu,
Dist. Parbhani.

...Respondents
(Ori. Defendants)

...

Mr. Sudhir K. Chavan, Advocate for petitioner
Mr. V. M. Mane, Advocate h/f Mr. Kalyan S. Chavan,
Advocate for respondent no. 4 and 5.

...

[CORAM: SUNIL P. DESHMUKH, J.]
Date: 21st June, 2017

ORAL JUDGMENT :

1. Learned counsel for petitioner, on instruction, seeks leave to delete respondents no. 1 to 3.

2. Leave granted as prayed for to delete respondents no. 1 to 3, at the risk and peril of writ petitioner.

3. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the appearing parties.

4. Writ petitioner questions validity and propriety of order dated 11th November, 2016 passed by the civil judge,

senior division, Pathri on exhibit-47 in regular civil suit no. 34 of 2014. Exhibit-47 was filed by defendants-respondents no. 4 and 5, seeking direction to plaintiff to amend the plaint by adding certain parties and about 14 properties as described in the application as well as in written statement and find out whether those are joint family properties or are acquired by plaintiff from his own fund.

5. It is contention of the plaintiff-petitioner that those properties are self-acquired properties. Written statement exhibit-30 had been filed by defendants no. 4 and 5 on 20th November, 2014, thereby opposing the claims made by the plaintiff.

6. It appears that issues are yet to be framed. The trial court while deciding application exhibit-47, has observed that the question as to whether those properties are self-acquired or joint family properties, can be decided only after considering evidence of the parties and at this stage, it cannot be taken up for deciding finally. The court further referred to that in suit for partition, to avoid multiplicity of proceedings and for proper adjudication, all members of hindu family should be included.

7. Learned counsel for petitioner candidly submits that properties referred to in application exhibit-47, are self acquired properties of the plaintiff and those have no concern with joint family property and joint family fund and further that plaintiff cannot be forced upon inclusion of the properties by way of amendment. Since defendants have pleaded that properties mentioned in application exhibit-47 are joint family properties, issue can be framed in that respect and burden of proving the same would lie on the defendants.

8. Learned counsel for the respondents submits that as a matter of fact, it would be in the interest of plaintiff to add all necessary parties and include the properties else suit would be bad for non-joinder of necessary parties and non-inclusion of all joint family properties. As such, petitioner shall not oppose the order passed.

9. Learned counsel for the petitioner submits that, in the first place, it is for the parties claiming to be joint family property, to discharge burden about the same and then owner may deny property to be joint family property. The plaintiff has asserted that, save the properties originally

included in the plaint, other properties referred to in application exhibit-47 are self acquired properties.

10. Having heard parties as aforesaid, it appears that the plaintiff is reluctant to include properties referred to in application exhibit-47 claiming the same to be self acquired properties, whereas, defendants claim those to be joint family properties.

11. In the circumstances, issues may arise and matters will have to be decided in accordance with evidence placed on record in respect of said issue.

12. In the circumstances, impugned order dated 11th November, 2016 passed by civil judge, junior division, Pathri on application exhibit-47 in regular civil suit no. 34 of 2014, would be required to be set aside and is accordingly set aside. Writ petition, as such, succeeds and is disposed of.

13. Rule is made absolute in terms of prayer clause (C).

[SUNIL P. DESHMUKH, J.]