

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.4613 OF 2014

01 Rameshwar s/o Venkoba Kakade,
age: 52 years, Occ: Agril,
R/o Kasari, Tq.Kaij, Dist.Beed.

02 Venkoba s/o Ganpati Kakade,
age: 74 years, Occ: as above,
R/o as above.

Petitioners

Versus

Smt.Sidwabai w/o Narsu Kakade,
age: 50 years, Occ: Agril.,
R/o Kasari, Tq.Kaij, District Beed.

Respondent

Mr.Ramraje Deshmukh, advocate holding for Mr.S.S.Thombre, advocate
for the petitioners
Mr.B.R.Kedar, advocate for the Respondent.

CORAM : S.B.SHUKRE, J.

DATE : 16th February, 2017

ORAL JUDGMENT :

1 Heard. Rule. Rule made returnable forthwith and heard
finally by consent of learned Counsel for respective parties.

2 The basic assertion of petitioners, who claim to be third
parties having interest in the *lis*, is on the fact that petitioner no.2-
Venkoba was real brother of Sahebrao – deceased defendant no.1 and
there there was a partition between Venkoba and Sahebrao, in which,
each of the persons came into possession of one-half share of the
property and thus, the petitioners are having possession over part of the
property, which is subject matter of the suit.

3 It is pointed out by learned Counsel for respondent that
none of the defendants, in the written statement, has averred that

Venkoba was in possession of some property and so the third party petitioners are presently in possession of part of the property.

4 According to learned Counsel for petitioners, the fact that petitioners being in possession, could be said to be impliedly admitted by the original plaintiff as the original plaintiff, in her application filed for seeking temporary injunction vide Exhibit-5, had joined the petitioner no.2-Venkoba as non applicant no.2.

5 Learned Counsel for the respondent submits that the petitioner no.2 was joined as non applicant no.2 only for the reason that it was the claim of the original plaintiff that the petitioner was helping the defendants in committing their illegal acts and that it was never the case of the original plaintiff that Venkoba was in possession of part of the suit property.

6 Considering these submissions, I find that the learned Civil Judge has rightly found that the petitioners are not and could not be necessary parties in the present suit and that the petitioners can very well establish their right, title and interest in the suit property by instituting separate proceedings. In such a situation, petitioners could not be permitted to join the cause of action of this suit. There is no merit in this petition.

7 Writ Petition stands dismissed. Rule discharged. No costs.

S.B.SHUKRE
JUDGE

adb/wp461314