

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9804 OF 2017
(Zumbarlal Rama Thombre and another Vs. Navnath Bhimraj
Thombare and others)

Mr.N.V.Mande, Advocate for the petitioners.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 07/08/2017

PER COURT :

1. The petitioners are aggrieved by the order dated 14/03/2017 passed by the Trial Court rejecting Exh.35 and thereby refusing to frame an additional issue as is proposed by defendant Nos. 1 and 2.

2. The petitioners have strenuously criticized the impugned order. Contention is that the plaintiff claims that defendant No.3 Bhimaji is the father of the plaintiff and Bhimaji is the son of Rama Thombare. The petitioners / defendant Nos. 1 and 2 are the sons of Rama Thombare.

3. The suit preferred by the plaintiffs is for partition and separate possession of the ancestral property. The onus and burden lies on the plaintiffs to prove that all the properties mentioned in the plaint are ancestral properties which, therefore, pre-supposes a close blood

relationship between all the litigating sides which would relate them to their predecessors in title.

4. The petitioners / defendant Nos. 1 and 2 alleged that Bhimaji is the son of Sakharabai from her previous marriage. After Sakharabai was rendered a widow, she has subsequently married Rama Thombare. Bhimaji, therefore, would be the step brother of the petitioners.

5. The petitioners pray that the Trial Court should have framed a issue as to whether the plaintiff proves that his father defendant No.3 / Bhimaji is the son of deceased Rama Thombare ? The Trial Court has observed in the impugned order that the onus and burden of establishing blood relations amongst the litigating sides would always be on the plaintiffs initially.

6. Issues have been framed. The first issue as to whether the plaintiffs prove that the suit properties are ancestral properties of the litigating sides and the 2nd issue is whether the plaintiffs prove that they are entitled to claim partition in the suit properties. This would give an opportunity to the litigating sides to establish their rival contentions. The Trial Court has therefore observed that the

plaintiffs will have to establish relationship and the contentions of defendant Nos. 1 and 2 with regard to Bhimaji and Rama will always be subject matter of oral and documentary evidence while deciding issue Nos. 1 and 2.

7. Considering the above, it appears that the grievance of the petitioners is taken care of by the observations in the impugned order and since the plaintiffs will have to establish the relationship between the litigating sides, I do not find that the impugned order could be termed as being perverse or erroneous.

8. This petition being devoid of merit, is therefore, dismissed.

(Ravindra V.Ghuge, J.)