

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5620 OF 2016

VITTHAL SOPAN MANE AND ANOTHER
VERSUS
SOPAN EKNATH MANE AND OTHERS

...

Advocate for Petitioners : Shri Latange V. P.
Advocate for Respondents 1 to 4 : Shri Garud N.C.

...

CORAM : RAVINDRA V. GHUGE, J.
Dated: July 03, 2017

...

PER COURT :-

1. The petitioners / plaintiffs are aggrieved by the order dated 1.4.2016, by which, application Exhibit 32, filed by the plaintiffs seeking amendment to the plaint for including two properties, which are alleged to be ancestral properties, as well as addition of the sister-in-law of the plaintiffs, has been rejected.

2. I have considered the submissions of the learned Advocates for the respective sides.

3. The plaintiffs have filed RCS No.188 of 2015 for seeking partition and separate possession as regards the ancestral properties. The petitioners are real brothers. Defendant No.1 is the father of the plaintiffs. Defendant No.2 is the real brother of

the plaintiffs. Defendant No.3 is the mother of the plaintiffs and defendant No.4 is the sister of the plaintiffs.

4. Grievance is that two properties mentioned in Exhibit 32 are ancestral properties and they have not been included in the plaint by inadvertence. Exhibit 32 was filed prior to framing of the issues.

5. It is trite law that in a suit for seeking partition and separate possession with regard to the ancestral properties, all the properties have to be included in the common hotchpot. No portion of the ancestral property is desired to be left out.

6. In the instant case, the plaintiffs have sought the inclusion of two properties, situated in land S. No. 1049 and 966, alleged to have been sold out by the father of the plaintiffs to the sister-in-law of the plaintiffs.

7. The trial Court has rejected the application for the reason that there was nothing placed before the trial Court, as regards the alleged nexus between the said two properties and the ancestral properties. The trial Court has held that only because the plaintiffs claim that the properties owned by Usha are

ancestral properties would not be enough as the plaintiffs must indicate some connection between the said properties and the ancestral properties.

8. The contention of the plaintiffs is that as the properties are sold by their father to their sister-in-law Usha, there is a presumption that these properties are ancestral. However, to even indicate such a sale between father Sopan and sister-in-law Usha, no documents were placed before the trial Court.

9. Another reason for rejecting Exhibit 32 by the trial Court is that the plaintiffs have sold two portions of their properties on 31.8.1983 and 22.7.2005, which according to the defendants were ancestral properties. The plaintiffs have left out these properties from the ambit of the suit, so as to digest the said sale. It was in these circumstances that the trial Court concluded that the plaintiffs have not filed Exhibit 32 with clean hands.

10. So also, the plaintiffs did not place before the trial Court any document to indicate that a sale in fact, had occurred between Sopan and Usha. No details were placed before the trial Court.

11. In this backdrop, merely because a second view is possible, the impugned order cannot be termed as being perverse. A mere affidavit would not be enough to add properties to the partition suit, though it is settled by the Honourable Apex Court in the matter of Revajeetu Builders and Developers Vs. Narayanaswamy and sons [(2009) 8 MLJ 907- (SC)] and in the matter of Chakreshwari Constructions Private Limited Vs. Manohar Lal [(2017) 5 SCC 212], that the merits of the amendment are not to be gone into.

12. In my view the plaintiffs could have mentioned the details of the purported sale between Sopan and Usha and could have infused some merit in Exhibit 32, to prima facie convince the trial Court that the properties could be part of the ancestral properties. In the absence of such details and pleadings, the impugned order of the trial Court cannot be interfered with.

13. This petition being devoid of merits is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

...