

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6608 OF 2014

RAMESHWAR BALKISAN OZA AND ANR
VERSUS
SHOBHABAI GULAB SABLE AND OTHERS

Advocate for Petitioner : Shri S.S. Bora.
Advocate for Respondent: Shri S.J. Salunke.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 12th June, 2017

PER COURT :-

1. The petitioners are aggrieved by the order dated 11/03/2014 passed by the Trial Court, by which, application Exhibit 55 filed by respondent No.3 herein, in RCS No. 170/2009, has been allowed under Order I Rule 10 of the CPC. Subsequently, the petitioners are directed to add respondent No. 3, as defendant No. 3, in the suit.

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

3. The petitioners claim that respondent No. 3 / Radhakisan Ramprasad Oza is a non existing person. He is not connected

with the suit property. By application Exhibit 55, he has attempted to suggest that he is the son of Ramprasad Oza and is not the son of defendant No. 2 / Ramprasad Baburao Sable.

4. Shri Salunke, learned advocate on behalf of respondent No. 3, has drawn my attention to the written statement filed by defendant No. 1 / Shobha Gulab Sable. He points out that Shobha has categorically stated in the first paragraph of the written statement that her name is Shobhabai Gulab Oza and not Shobabai Gulab Sable. Shri Salunke, then points out from paragraph No. 10, the family tree, by which, he submits that, Radhakisan is the son of Ramprasad and Mandodrabai. Mandodrabai was earlier married to Baburao Sable which finally resulted in a divorce. She then married Ramprasad Oza, it being an inter caste marriage. The plaintiffs who are related to Ramprasad Oza have attempted to show that Ramprasad was unmarried and had no biological son.

5. Both the learned advocates have narrated a host of features in this matter, none of which have been considered by

the Trial Court while passing the impugned order under Order I Rule 10 of the C.P.C. I do not find that the impugned order could be sustained since it is based merely on the conclusion that *“Applicant claim right over suit land and submitted that he be added as defendant.”*

6. Considering the above, this petition is partly allowed. The impugned order dated 11/03/2014 is quashed and set aside. Application Exhibit 55, is restored in RCS No. 170/2009. All the litigating sides are at liberty to canvass all their contentions with regard to the application and are also at liberty to enter brief notes of submissions, if found appropriate.

7. Needless to state, it is expected that the Trial Court while deciding the application Exhibit 55, shall consider the scope of Order I Rule 10 as well as Order 22 Rule 5 of the CPC and shall consider all the contentions of the litigating sides and pass a reasoned order.

(RAVINDRA V. GHUGE, J.)