

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7135 OF 2016

(Vithal s/o Dagadu Sondge Vs. Bhausaheb s/o Kondiba Sondge and others)

Mr.B.V.Andure, Advocate for the petitioner.

Mr.D.A.Madke h/f Mr.S.Y.Mahajan, Advocate for respondent No.1.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 15/06/2017

PER COURT :

1. The petitioner is aggrieved by the order dated 31/03/2016 by which application Exh.96 praying for framing of an additional issue in RCS No.220/2011 has been rejected.

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

3. The petitioner/plaintiff has specifically pleaded in paragraph No.7 of his plaint as regards the partition in the family in May 1986 and thereafter he having earned from his service to acquire the suit property. Contention of it being a self acquired property is on record. The plaintiff has also alleged *benami* transaction as against defendant No.1 and has contended that he is a *benamidar*.

4. Issue No.4 in my view would enable the petitioner to lead evidence on his pleadings set out in paragraph No.7 of the plaint. Even the Trial Court has concluded that for deciding the issue of self acquired property, the Court is not required to decide as to when the partition has taken place. The plaintiff can prove that the sale deed dated 09/08/1982 is out of his exclusive personal source of income and he has purchased the property from his personal earnings.

5. Considering the above, I find that this petition is without merit as the interest of the petitioner is taken care of by the observations in the impugned order as well as in this order. This petition is, therefore, dismissed.

(Ravindra V.Ghuge, J.)