

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10032 OF 2017

SHRI SIDDHIVINAYAK REAL DEVELOPERS AND ANOTHER
VERSUS
SHRIMATI REKHA RAJENDRA DEVARE AND OTHERS

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Advocate for Petitioners : Shri Talhar Ajay G.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: August 21, 2017

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PER COURT :-

1. The petitioners are aggrieved by the order dated 10.3.2017 passed by the trial Court by which the amendment is permitted to be carried out by the plaintiff, so as to include all the ancestral properties in the suit for partition and separate possession.

2. Grievance of the petitioners is that after issues were cast on 3.11.2015, the trial has commenced. The plaintiff who is the married daughter of defendants 1 and 2 and a sister of the remaining defendants, except defendants 8 and 9, had initially included only one ancestral property in the suit. By the amendment, she sought to include some other properties

claiming them to be ancestral properties. Once the trial has commenced by framing of the issues, such inclusion should not be permitted and the suit deserves to be dismissed for non inclusion of all the ancestral properties.

3. It is further stated that the petitioner / establishment has purchased some properties from the original owner / defendant 1, who is the father of the plaintiff. The petitioners are bonafide purchasers and once the property is purchased, the said property could not have been included in the suit. The petitioners rely upon the judgment of this Court in the matter of Antonio Braganza and another Vs. Antoneto John D'Souza and another [2016 (2) Bom. C.R.399], to support their contention that due diligence has to be tested while entertaining an application for amendment under the proviso to Rule 17 of Order VI of the CPC.

4. I have considered the strenuous submissions of the petitioners and have gone through the citation.

5. It is trite law that the endeavour of the Court is to ensure that multiplicity of litigation is avoided and ends of

justice are met. It is settled law that all the ancestral properties are to be included in the common hotchpot for the purposes of dealing with a suit for partition and separate possession in matters of ancestral properties. Whether defendant No.1, has legally sold a portion of his ancestral property to the petitioners since it constitutes a part of his ancestral holdings, will have to be gone into in the pending suit. An irreparable harm and grave prejudice would be caused to the plaintiff if the ancestral properties inadvertently left out of the suit are not included in the common hotchpot.

6. In so far as due diligence is concerned, the issues were cast on 3.11.2015. The suit was instituted in 2013 and is not more than five years old. Application Exhibit 67 seeking an amendment was filed on 6.1.2017. The impugned order dated 10.3.2017 is challenged by the petitioners on 10.7.2017.

7. The Honourable Apex Court in the matter of Revajeetu Builders and Developers Vs. Narayanaswamy and sons [(2009) 8 MLJ 907- (SC)], has concluded that the merits of the amendment are not to be scrutinized while allowing the amendment. If the ends of justice are met and if by grant of

amendment, an irreparable loss and grave prejudice to any litigating side could be avoided, the law should endeavour to avoid such repercussions.

8. In this case, a married daughter is litigating for her share in the suit against her parents, her brothers and her sisters. It cannot be ruled out that in rural areas, a married daughter may not have the complete knowledge of all the ancestral properties. In rural areas, daughters rarely participate in such affairs of the family which are always taken care of by the adult members of the family.

9. Keeping this social status in view, I do not find that the impugned order could be termed as being perverse or erroneous by which, the plaintiff is permitted to add all the properties for the purposes of determination of the main issue in the suit.

10. Keeping in view the law laid down by the Honourable Apex Court in the matter of Syed Yakoob Vs. K.S. Radhakrishnan and others [AIR 1964 SC 447] and Surya Dev Rai Vs. Ram Chander Rai [(2003) 6 SCC 682], unless the

impugned order appears to be perverse and erroneous, same cannot be interfered with only because a different view could be possible.

11. Considering the above, this petition being devoid of merits is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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