

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.129 OF 2016

Devidas S/o Amruta Gaikwad & others

Petitioners

Versus

Ramchandra S/o Pandusingh Chungde & others

Respondents

Mr. S.A. Deshmukh advocate for the petitioners

Mr. D.K. Rajput Advocate for Respondent Nos.1 to 5

CORAM : **RAVINDRA V. GHUGE, J**

(Date : 17th July, 2017.)

PER COURT :-

1 The petitioners are aggrieved by the order dated 30.10.2015, by which applications Exhibit 61 and 65 filed by the plaintiffs for addition of legal heirs of their deceased married sister Janabai, have been rejected.

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

3 There is no dispute that RCS No.269/2006 has been filed by the plaintiffs Devidas S/o Amruta Gaikwad, Shrimant S/o Amruta Gaikwad and Namdeo S/o Amruta Gaikwad. These are three real brothers, who claim that the defendants have illegally got the

possession of the suit land and thereafter continued in possession. By the said Suit, these plaintiffs seek recovery of the possession of the suit lands.

4 On 2.9.2015 i.e. after nine years of the filing of the Suit, the applications have been moved contending that there was a typing mistake. Name of Janabai was left out from the array of the plaintiffs.

5 In my view, having not impleaded Janabai as plaintiff, cannot be said to be a typing or a typographical error. The three real brothers have together filed the suit for claiming possession of the suit land. Janabai is a married sister, who was staying in her marital home. Subsequently, Janabai has passed away. Suit property is ancestral.

6 The Trial Court has concluded that the suit filed by the three brothers is not for seeking partition and separate possession of the ancestral property. It is only a suit seeking recovery of the possession which allegedly has been held by the defendants. Janabai, even if she would have been alive, could not have possessed the suit land since she was a married sister and was living in her marital home.

7 In my view, the Trial Court has rightly concluded that if the suit was for partition and separate possession, Janabai and after her passing away, her legal representatives would have been necessary parties as the partition would have led to crystallizing their shares in the suit land.

8 Considering the above, I do not find that the impugned order can be termed as being perverse or erroneous. Merely because a second view or a different view is possible, the impugned order cannot be interfered with.

9 As such, this petition being devoid of merit, is dismissed.

(RAVINDRA V. GHUGE , J)