

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 634 OF 2015

MR. SHRIKANT YESHWANT PAI ANGLE
AND 7 ORS.,

... Petitioners

Versus

MISS. VASSANTI BALKRISHNA PRABHU
COLVALKARAND AND 11 ORS.,

... Respondents

Mr. S. M. Singbal, Advocate for the petitioners.

Mr. Sandesh D. Padiyar, Advocate for the respondent nos.1 and 2.

Coram:- M. S. SONAK, J.

Date:- 19th April, 2017

ORAL ORDER

Heard Mr. S. M. Singbal, learned Advocate for the petitioners and Mr. Sandesh D. Padiyar, learned Advocate for the respondent nos.1 and 2.

2. The challenge in this petition is to the orders dated 8.4.2015 made on Exhs. 44,46 and 49 by the learned Trial Judge declining to implead the petitioners and some other defendants in Special Civil Suit No.70/2007/A.

3. The respondent nos.1 and 2 are the plaintiffs in the Special Civil Suit No. 70/2007/A. The respondent nos.3 to 12 are the defendants in the suit. Suit is basically for the partition of the suit properties.

4. The petitioners take out applications at Exhs.44,46 and 49 seeking their impleadment on the ground that the plaintiffs and

the defendants in the suit claims certain right to the suit properties on the basis of a Will left behind by Ms. Shantabai Balkrishna Colvalkar, their mother.

5. Mr. Singbal, learned Counsel for the petitioners/applicants submits that in terms of the Will only 50% of the mother properties could have been bequeathed to the plaintiffs and the defendants in the suit. He submits that Will, to the extent, it purports to bequeath the entire properties to the mother is invalid and is required to be suit amended. In any case it is necessary to declare that Will, valid to the extent bequeathed of only 50% of the share of the property of the mother. Mr. Singbal, submits that issue of validity of the Will is therefore, a vital issue in the suit. In order to decide such issue, the petitioners and the other applicants in applications at Exh. 44,46 and 49 are required to be impleaded as parties in the suit. Mr. Singbal submits that petitioners and the other applicants are in fact necessary party or in any case they are proper parties. For these reasons, Mr. Singbal prays that petition is liable to be allowed and applications at Exhs. 44,46 and 49 made absolute.

6. On the other hand, Mr. Padiyar, learned Counsel for the respondent nos.1 and 2 i.e original plaintiffs in the suit submits that, suit as instituted is a suit simpliciter for partition, no declaration of right has been applied for. Mr. Padiyar, submits that whatever decree in this suit, the same, will, in no manner, bind the petitioners. He submits that in a suit for partition

simpliciter, the question of validity of the Will or the question of disposal of quota is irrelevant in case, the petitioners, are serious of issues raised, it is always open to the petitioners to institute an independent proceedings for such reliefs. Mr. Padiyar points out that this is precisely what has been viewed by the learned Trial Judge in the impugned order. On this basis, Mr. Padiyar submits that this petition may not be entertained.

7. On perusal of the material on record, it is quite clear that Special Civil Suit No.70/2007/A instituted by respondent nos.1 and 2 is one for partition simpliciter. No relief of declaration or determination of rights as such have been applied for. In such a suit, issue as to whether the Will left behind by the mother is part or not or the issue as to whether the Will, be restricted to the bequeath of 50% share of the mother. In a suit for partition, such an issue is not required to be determined. In order to assert this claim, it is always open for the petitioners to institute an independent proceedings. However, the petitioner, cannot be regarded either necessary or proper party in the present suit. In case, impleadment is permitted, the suit as instituted, will no longer remain a suit for partition simpliciter.

8. It is true, as contended by Mr. Singbal that the Court should endeavor to prevent multiplicity of proceedings, however, this does not mean that the plaintiffs who have chosen to institute a suit for partition must be compelled to amend their reliefs and seek for declaration. It also does not mean that parties can

interfere and challenge the very nature of the suit thereby forcing decision on the validity or extent of the Will.

9. The impugned order has itself held that it is open to the petitioners to take out an independent proceedings in relation to the Will. Besides, any decree in the SCS No.70/07/A will certainly not bind the petitioner particularly when it is case of the petitioners that parties in the suit can claim right maximum to the extent of 50% of the mother's share. In that sense, there is no question of any prejudice to the petitioners.

10. There is no jurisdictional error in the impugned order. The discretion in the present case cannot be said to have been exercised unreasonably or perversely. The petition is therefore, dismissed. However, since the petitioners intend to take out separate proceedings and since, by an interim order this Court had requested the learned trial Judge to postpone the hearing of the suit by a period of two weeks. It is now directed that further hearing in this suit be deferred until 15.6.2017.

11. With the aforesaid directions, this petition is disposed of.

12. It is made clear that this Court has not adverted to the respective rights and contentions of the parties and therefore all such rights and contentions are left open to be determined by the Civil Court. None of the observations in this order may be construed as any observation in the petition in relation to inter se dispute between the parties.

13. There shall be no order as to costs.

14. Parties to act on the duly authenticated copy of this order.

M. S. SONAK, J.

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