

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 9673 OF 2018

DEVRAO BIRU KALE AND OTHERS
VERSUS
SHRI YOGESHWARI EDUCATION SOCIETY AMBAJOGAI THROUGH THE
SECRETARY S R SONWALKAR

...
Advocate for the Petitioners : Shri More P.P.
AGP for Respondents 2, 3 and 4 : Shri S.R.Yadav.

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CORAM: RAVINDRA V. GHUGE, J.
DATE :- 27th August, 2018

Per Court:

1 The Petitioners are aggrieved by the order dated 13.10.2017 passed by the Trial Court rejecting the application Exhibit 126 filed by these Petitioners in RCS No.134/2007.

2 I have heard the strenuous submissions of the learned Advocate for the Petitioners and have gone through the petition paper book.

3 The contention of these Petitioners/ third parties, while moving the application Exhibit 126 for addition as defendants, is that the land bearing Survey No.92 (Hissa Nos.3 and 4) was owned and possessed by the deceased Khandu s/o Mahadu, who is the ancestor of these Petitioners. The land to the extent of Hissa Nos.3 and 4 belongs to these Petitioners. As such, RCS No.134/2007 filed by the Plaintiff/ College

seeking declaration of title, ownership and removal of encroachment, cannot be adjudicated upon without hearing these Petitioners. It is further contended that the said suit cannot be properly adjudicated upon without inclusion of these Petitioners as defendants.

4 When called upon to state as to whether, there is any revenue entry in the name of these Petitioners, it is stated that there is no such revenue entry for the past about 50 to 60 years, though earlier thereto, revenue entry did exist in the name of the deceased Khandu.

5 I find from the record that the ancestor of these Petitioners had sold the property to the original Plaintiff vide the registered sale deed about 50 to 60 years ago. Subsequently, the ancestor of the Petitioners filed Special Civil Suit No.27/1973 seeking declaration of ownership and possession over the land bearing Survey No.92/B, 92/C and 92E. The said suit was dismissed by the judgment dated 30.06.1975 and the said Plaintiff was not held to be entitled to the said land.

6 The record also reveals that these Petitioners have filed RCS No.307/2015, which is pending.

7 Considering the above, I do not find that the impugned order could be termed as being perverse or erroneous. This Writ Petition being devoid of merit is, therefore, dismissed.