

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1052 OF 2018
(Durgesh Vasant Patil and others Vs. Ushabai Bhagwan Patil and
others)

Mr.A.S.Savale, Advocate for the petitioners.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 29/01/2018

PER COURT :

1. The petitioners, who are original defendants in Special Civil Suit No.23/2010, are aggrieved by the order dated 09/11/2017 passed by the Trial Court by which application Exh.143 filed by the petitioners praying for rejection of the plaint under Order 7 Rule 11 of the CPC, has been rejected.

2. Learned Advocate for the petitioners has strenuously criticized the impugned order. Reliance is placed upon the judgment of the Hon'ble Apex Court in the matter of Prakash and others Vs. Phulavati and others [2015 AIR SCW 6160] to contend that the amendment to the Hindu Succession Act in 2005 has been considered by the Hon'ble Apex Court and certain principles have been set out in the said judgment. The plaintiff does not fulfill such requirements of Law and merely because she is a daughter or a sister, would not give her a

right to seek partition and separate possession in the ancestral property.

3. I have considered the submissions of the learned Advocate who has taken me through the grounds formulated by him and the impugned order.

4. This Court, in the matter of Prabhudayal Vs. Smt.Shantabai [2016(4) All MR 85] has held that issues are to be framed on the basis of the pleadings of the parties considering the controversy that needs to be addressed in the proceedings and the documents available. Once the issues are cast and the trial has commenced, taking up an issue of a preliminary objection without any party having made a request earlier, should not be normally entertained. The Hon'ble Apex Court has also ruled in catena of judgments that suits should not be decided piecemeal.

5. In the instant case, the suit has been instituted in 2010. Issues have been cast and trial has commenced. Exh.143 has been filed on 09/01/2017. The plaintiff has already been examined at Exh.58 on 12/04/2012. Her cross examination is over on 13/08/2013. Defendant No.2 has also led evidence by filing an

affidavit in lieu of examination in chief at Exh.97 on 22/01/2014.

6. In the above backdrop, I do not find that the Trial Court has committed any error and the impugned order can not be termed as being perverse or erroneous.

7. This petition, being devoid of merit, is therefore, dismissed.

(RAVINDRA V. GHUGE, J.)