

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2173 OF 2018

ROTYA PHULAJI GAVIT
VERSUS
RATANJI BABU GAVIT AND OTHERS

Advocate for Petitioner : Mr. J.R. Shah.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 13th March, 2018

PER COURT :

1. The petitioner/original plaintiff is aggrieved by the order dated 17/02/2017, passed by the Trial Court, by which, the application seeking addition of two issues, dated 05/08/2016, has been rejected.

2. I have considered the strenuous submissions of the learned advocate for the petitioner. With his assistance, I have gone through the petition paper book and the seven grounds formulated by him.

3. The petitioner's contention is that the defendants have filed their written statement and a counter claim. It is set out by the defendants that Fulji Jatrya and Noprya Jatrya were the tenants. Their sister Mouli Bai has a son Babu Naukhya and he was also in the joint

occupation of the suit land. However, entry of Noprya Jatrya alone was taken. He had good relations with Babu Naukhya and hence, the name of Babu Naukhya was not entered in the 7/12 extract. The defendants had therefore, tried to suggest that the suit land was purchased jointly by the three persons including the father of the plaintiff and as such they were joint owners and were cultivating jointly. This aspect will have to be proved by the defendants and for which a specific issue will have to be framed.

4. The Trial Court has framed eleven issues on 27/04/2007, in the suit which was instituted in the year 2004.

5. The issue of the 'owner of the suit land' and whether the plaintiff is in exclusive possession of the suit land, has been framed. The issue whether the defendants prove that they are the owners of the suit land have also been framed. The Trial Court has rejected the application filed by the plaintiff.

6. It is obvious that when the Trial Court has framed the issue as to whether the defendants prove that they

are the owners of the suit land, the defendant will have to establish the said claim on the basis of the evidence adduced by keeping in view their pleadings set out in the written statement and the counter claim. The suit has reached the final stage in the year 2016. At the fag end of the suit before the Trial Court, the application is filed for addition of issues.

7. I find that the Trial Court was right in observing that whether the defendants can prove their title and ownership, would be subject matter of issue No. 4 and for establishing the same, they will have to prove as to how did they purchase the suit land. This petition being devoid of merit, is therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

S.P.C.