

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

32 WRIT PETITION NO. 5344 OF 2017

LAXMIBAI KARBHARI SANGALE
VERSUS
SUKHLAL TUKARAM SANGALE AND OTHERS

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Advocate for Petitioner : Mr. Patil Bipinchandra K.
Advocate for Respondent Nos. 1 to 3 : Mr. Jadhav K. B.

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CORAM : V. K. JADHAV, J.
DATED : 23rd APRIL, 2018

PER COURT:-

1. By consent, this matter is remitted to the trial court.
2. The petitioner/original plaintiff has instituted the suit for a decree of perpetual injunction in respect of the suit property as against the real brothers of her deceased husband. It is the case of the petitioner/plaintiff that the ancestral property came to be partitioned between her deceased husband and his brothers/respondents herein. The trial court has allowed the application exhibit 5 seeking issuance of injunction to protect her possession. However, the trial court has issued injunction in

respect of the entire property. The learned District Judge-12, Aurangabad has allowed Misc. Civil Appeal No. 32 of 2017 preferred by the respondents on that count alone, with the observations that the petitioner/plaintiff has not stated the correct share which came to be allotted to her deceased husband in the partition and in absence of proper description of the property and proper share, the so called possession cannot be protected.

3. The learned counsel for the petitioner has pointed out that during pendency of this Writ Petition, the petitioner/original plaintiff has filed an application seeking amendment in the plaint and the trial court, by order dated 10.08.2017, allowed the said application. In view of the above, the matter is remitted to the trial court for deciding the application exhibit 5 afresh in the light of the amendment as carried out by the petitioner/plaintiff in the plaint and also considering the written statement filed by the respondents/defendants to the said amended portion of the plaint. Needless to say that the earlier order passed below exhibit 5 is quashed and set aside. Hence the following order:

ORDER

- I. The Writ Petition is hereby partly allowed. No costs.
- II. The order dated 20.02.2017 passed below exhibit 5 is hereby quashed and set aside and the matter is remitted to the trial court for deciding the application exhibit 5 afresh in the light of the amendment carried out by the petitioner in the plaint and also in the light of the reply, if any, filed by the respondents/original defendants to the said amended part.
- III. The Writ Petition is accordingly disposed of.

(V. K. JADHAV, J.)

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