

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

WRIT PETITION NO. 6992 OF 2018

- 1] Shri Bharat Dharma Khadke
Age 40, Occu. Agri.& Business,
R/o :- 200, Rampeth, Jalgaon
Tal. & Dist.- Jalgaon.
- 2] Shri Rajaram Namdev Patil
Age 43, Occu. Agri. & Business,
R/o : 17 Dhake Wadi, Jalgaon
Tal and Dist.-Jalgaon.
- 3] Shri Anil Padurang Chaudhari
Age 43, Occu. Agri & Business,
R/o : 14, Iswar Colony, Jalgaon
Tal and Dist.-Jalgaon.
- 4] Shri Suhas Bhagawan Chaudhari
Age 36, Occu. Agri & Business,
R/o :- Tuljai nagar, Jalgaon
Tal and Dist.-Jalgaon.
(The Petitioner No. 4 is
The GPA of Petitioners No.1 to 3)**PETITIONERS**

VERSUS

- 1] Sau. Nalini Vasant Dhande
Age 68, Occu. Housewife
R/o : Dhande Wada, Vitthal
Peth, Jalgaon, Tal and
Dist.-Jalgaon.
- 2] Sau. Manisha Nitin Narkhede
Age 40, Occu. Housewife
R/o : Behind Aadhav Hospital
Gulmohar colony, Kopargaon,
Tal : Kopargaon, Dist.-A'nagar

- 3] Shri Vasant Dalu Dhande
Age 78, Occu. Agri.
R/o : Dhande Wada, Vitthal Peth,
Jalgaon, Tal and Dist.-Jalgaon.
- 4] Shri Nilesh Dalu Dhande
Age 39, Occu. Agri
R/o : Dhande Wada, Vitthal Peth,
Jalgaon, Tal and Dist.-Jalgaon.
- 5] Shri Sandip Dalu Dhande
Age 37, Occu. Agri.
R/o : Dhande Wada, Vitthal Peth,
Jalgaon, Tal and Dist.-Jalgaon.

....RESPONDENTS

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Advocate for the Petitioners : Shri D. B. Shinde
Advocate for Respondent Nos. 1 and 2 : Shri S. H. Tripathi
Advocate for Respondent Nos. 3 to 5 : Shri P. P. Kothari.

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 25th SEPTEMBER, 2018.

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ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the learned Advocates for the respective sides.

2. The petitioners are aggrieved by the order dated 12/03/2018 passed by the learned Principal District Judge, Jalgaon, by which, Civil Misc. Application No.302/2017, filed

by these petitioners under Section 24 of the Code of Civil Procedure, has been rejected. The learned Principal District Judge, Jalgaon has, therefore, refused request to transfer RCS No. 354/2013 from the II Jt. Civil Judge, Junior Division, Jalgaon to the 6th Jt. Civil Judge, Senior Division, Jalgaon, which is dealing with Special Civil Suit No. 207/2012.

3. I have considered the submissions of the learned Advocates for the respective sides.

4. I have considered the judgment in ***Gurdeepsingh Gopalsingh Bagga & ors. Versus Gurucharansingh Gopalsingh Bagga & ors., 2014(3) Mh.L.J. 935***, cited by the petitioners.

5. The learned Principal District Judge has specifically observed in paragraph 7, after considering the submissions of the learned Advocates and upon going through the two pending suits, as under :-

"Prima facie it reveals that the applicants have filed Special Civil Suit No.207/2012 against respondent No.3 Vasant Dhande, the husband of respondent No.1

Nalini Vasant Dhande, while Regular Civil Suit No.354/2013 is filed by respondents 1 and 2 against respondent No.3 for partition and separate possession and these applicants subsequently made party seeking relief against them that the sale deed executed between applicants and respondent No.3 is not binding on them. It reveals that the relief claimed in both the suits are quite different though subject matter i.e. suit properties are same. As submitted on behalf of respondents 1 and 2 that already the matter is closed for argument, these applicants have not taken any steps in the said matter when the no written statement order is passed as well as evidence is recorded of plaintiff and defendant No.1. Therefore, even if it is assumed that the said suit is decided by the trial Court granting or rejecting the share of respondents 1 and 2 in the said case, no prejudice will be caused to these applicants as the respondents 1 and 2 are claiming their alleged right in the suit property by seeking relief of partition, while Special Civil Suit No. 207/2012 is between the applicants and respondent No.3 who allegedly executed sale deed in favour of applicants. Therefore, even if it is assumed that the suit filed by respondents 1 and 2 is decreed at the most it will be to the extent of their rights in the suit property when two different reliefs are claimed in both the suits. Moreover, the matter in Regular Civil Suit No. 354/2013 is already substantially heard and pending for final argument it is desirable to withdraw the said suit and

transfer to the file of 6th Joint Civil Judge Senior Division, Jalgaon where Special Civil Suit No. 207/2012 is pending and which is part-heard."

6. It is, therefore, obvious that in one suit, the petitioners are seeking specific performance of contract with regard to an agricultural land. In another suit, the plaintiffs are seeking partition and separate possession of the same agricultural land and a house property. The house property is not a subject matter of the suit preferred by these petitioners. It requires no debate that these petitioners would have a right to the extent of the share of their vendor from whom they have purchased the agricultural land. In the partition suit, the shares of the close relatives would be decided and the vendor of these petitioners is one of the litigating sides.

7. I, therefore, do not find that the view taken by the learned Principal District Judge in rejecting the application for seeking transfer of proceedings and clubbing both the suits would be termed as being perverse or erroneous. The view taken in *Gurdeepsingh (supra)*, would not assist the petitioners as the suit property in those two suits was identical and this

Court merely directed the transferring of a suit to the same Court which was dealing with the other suit. The direction to club the two suits and try both of them together, was not approved by this Court.

8. Considering the above, this petition, being devoid of merit is, therefore, dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)

shp/-