

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

WRIT PETITION NO. 5368 OF 2017

PRABHU @ PRABHAKAR DEVRAO BARGAJE
VERSUS
SACHIN SUDHIR KHARADE AND OTHERS

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Advocate for the Petitioner : Smt.Kulkarni M.A..

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CORAM: RAVINDRA V. GHUGE, J.
DATE :- 13th June, 2018

Per Court:

1 None appears for the Respondents, who are the original Plaintiffs. Office remark dated 13.06.2017 pursuant to the order of this Court dated 05.06.2017 indicates that the Respondents are served.

2 The Petitioner, original sole Defendant in RCS No.306/2015, is aggrieved by the order dated 24.03.2017 by which, though three additional issues have been cast, an issue as desired by the Petitioner has not been cast.

3 I have considered the strenuous submissions of Mrs.Kulkarni, learned Advocate for the Petitioner and have gone through the petition paper book with her assistance.

4 The grievance of the Petitioner is that he and his wife Nilawati, who is Plaintiff No.3, never had a daughter by name "Vijaya". They had daughter by name "Vijaymala". The Petitioner has specifically stated in the Written Statement in paragraph 2 that his daughter was

“Vijaymala” and not “Vijaya”. It is also stated that Vijaymala had never entered into wedlock. Therefore, Plaintiff No.1 (Sachin) and Plaintiff No.2 (Priyanka) are not the son and daughter of Vijaymala, much less of Vijaya.

5 Insofar as the confusion between the names Vijaymala and Vijaya is concerned, I find that probably the daughter of the Petitioner Vijaymala was commonly called as “Vijaya” and her name is shown in the family tree in the plaint by the Plaintiffs as “Vijaya”. Sachin and Priyanka claim to be the son and daughter of the deceased Vijaya, who passed away on 20.06.1999. The contention of the Defendant is that Vijaya @ Vijaymala was never married and hence, there was no question of Plaintiff Nos.1 and 2 being born as biological children of Vijayamala.

6 I find that the Trial Court has not even dealt with this aspect and by brushing aside the rival pleadings of the parties, it has failed to cast an issue in the light of the objections raised by the Petitioner.

7 In the light of the above, this Writ Petition is partly allowed and the impugned order dated 24.03.2017 stands modified to the extent that the learned Trial Court shall frame an additional issue as under :-

"Whether, the Defendant proves that Vijaya @ Vijaymala was not married and/or had never given birth to biological children, namely, Plaintiff No.1 (Sachin) and Plaintiff No.2 (Priyanaka)."