

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

WRIT PETITION NO. 11113 OF 2018

**DNYANOBA ALIAS DNYANESHWAR MANIKRAO MORE AND
OTHERS
VERSUS**

REKHA VISHNU SURWASE AND OTHERS

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Advocate for the Petitioners : Shri M. P. Kale

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 05th OCTOBER, 2018.

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PER COURT :

1. The petitioners, who are defendants are aggrieved by the impugned order dated 19/07/2018 passed by the Trial Court, by which, application Exhibit 74 filed by these petitioners in RCS No. 134/2016 praying for framing additional issues, has been rejected.

2. I have considered the strenuous submissions of the learned Advocate for the petitioners and I have gone through the petition paper book with his assistance.

3. These petitioners have suggested the following issues

vide application Exhibit 74 :-

"Does the plaintiff proves that suit properties are the ancestral properties of the plaintiffs and defendant No.1 ?"

" Does plaintiffs prove that partition was took place in between the sons of Manikrao as pleaded in the Para No. 7 of the plaintiffs ?"

"Does plaintiffs proves that marriage of plaintiff No. 1 took place in the year 2008 ?"

4. The Trial Court has framed the issues on 29/11/2017, which read as under :-

1. Do the plaintiffs proves that, the plaintiff No. 02 is the only legally wedded wife of defendant No.1 ?
2. Do the plaintiffs proves that, the defendant No. 02 has executed sale-deed bearing No. 1350/2008, dtd. 03-04-2008 in favour of defendant No. 05 without authority ?
3. Do the plaintiffs proves that, the defendant No.01 has abandoned plaintiff No. 02 and neglected to maintain her without reasonable cause ?
4. Do the plaintiffs proves their share in the suit property ?
5. Are plaintiffs entitled for the reliefs sought ?
6. What order and decree ?

5. Defendant No. 1 Dnyanoba claims that he is the husband of defendant No.2 and defendant Nos. 3, 4 and 5 are their

children. Plaintiff No. 2 claims to be the wife of defendant No.1. Plaintiff No. 1 is the daughter born out of the wedlock between plaintiff No. 2 and defendant No.1. Being a biological daughter, she has joined plaintiff No.2 in the suit seeking partition and separate possession. Defendant No.1 started disliking plaintiff No.2. He developed an attraction towards defendant No.2 and allegedly formed a '*Gandharva*' marriage. Children were born out of the second marriage and the first marriage was not dissolved.

6. Considering the contentions of the plaintiffs, in my view, the Trial Court has rightly framed the first three issues, by which, the onus and burden is placed upon the plaintiffs to prove that plaintiff No. 2 is the legally wedded wife and defendant No. 1 abandoned plaintiff No.2 and neglected her and their biological daughter.

7. Since the claim of the plaintiffs is as regards partition and separate possession claiming that the properties are ancestral, the Trial Court has rightly placed the onus and burden on the plaintiffs to prove that they have a share in the

suit property. Since this issue takes care of the necessary ingredients required for seeking partition and separate possession, issue No. 1 and issue No. 3 as proposed by the petitioners are not necessary.

8. The plaintiffs alleged that defendant No.2, the purported illegal wife of defendant No.1, executed sale-deeds in favour of a third person who is defendant No.5 and claimed that the said sale-deeds are without authority. The onus and burden is, therefore, placed on the plaintiffs even on this count in issue No.2.

9. As these petitioners contend that the issue of partition needs to be considered by the Trial Court and a proper issue has not been framed thereby suggesting proposed issue No.2, I find that issue No.4 can cover the aspect whether there was an earlier partition of the suit.

10. Considering the above, I do not find that the impugned order deserves to be branded as being perverse or erroneous.

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

(RAVINDRA V. GHUGE, J.)

shp/-