

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10417 OF 2018
(Kumudini Ravindra Chaudhari and another Vs. Ravindra Zendu
Phalak and another)

Mr.A.G.Talhar, Advocate for the petitioners.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 18/09/2018

PER COURT :

1. The petitioners are aggrieved by the order dated 29/06/2018 passed by the Trial Court rejecting application Exh.24 filed by these petitioners/plaintiffs seeking amendment to the plaint in Spl.C.S.No.71/2017. The said application has been rejected on the ground that defendant No.1 could prove that Gat No.1006 at village Dambhurni was purchased through the joint earnings of defendant no.1 Ravindra and his wife and hence the said property is not required to be put in the common hotchpotch in the suit.

2. I have considered the submissions of the learned Advocate for the petitioners and have perused the 7 grounds formulated in the memo of the petition.

3. The suit, preferred by these petitioners against their brother/defendant No.1 and their father/defendant No.2, is for seeking partition and separate possession of ancestral property. The suit properties have been described in the plaint. Contention is that one property at Gut No.1006 is also an ancestral property and the same deserves to be included in the list of properties in the suit.

4. I find that defendant No.1 / brother of these plaintiffs is 60 years of age and defendant No.2 / father of the plaintiffs is 86 years of age. Defendant No.1 and his wife reside in Mumbai. Amounts were withdrawn from the bank account of the wife of defendant No.1 on 13/09/2001 and the said amount was used for purchasing the said property in the name of the wife. There is no dispute that the wife of defendant No.1 is shown to be the sole owner and title holder of the said property, thereby attracting Section 14 of the Hindu Succession Act, 1956.

**Kranti
Hansraj
Shekatkar**

5. Considering the above, I do not find that the impugned order could be termed as being perverse or erroneous. This petition, being devoid of merit, is therefore, dismissed.

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by Kranti
Hansraj
Shekatkar

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(Ravindra V.Ghughe, J.)