

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1419 OF 2018

SHIVKANTABAI SHIVLING MUMANE AND OTHERS
VERSUS
BHARATBAI DIGAMBAR BHENDE AND OTHERS

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Advocate for Petitioners : Shri Adgaonkar R.P.

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CORAM : RAVINDRA V. GHUGE, J.

Dated: February 07, 2018

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PER COURT :-

1. The petitioners are aggrieved by the order 28.6.2017 passed by the trial Court by which, application Exhibit 32 has been partly allowed. Grievance is that the petitioners who are original defendants have prayed for framing two issues. Firstly, whether the suit is bad for non-joinder of necessary party and secondly, whether the plaintiffs prove that their mother is the legally wedded wife of deceased Shivling Mumane. The trial Court has framed the issue with regard to non-joinder of parties and has concluded that the plaintiffs will have to prove their entitlement only through their relation with Shivling and hence a separate issue need not be framed.

2. Grievance of the defendants is that if a specific issue is framed as regards who is the legally wedded wife of deceased Shivling, the plaintiffs will be in a better position to lead proper evidence.

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3. I find that the onus and burden is on the plaintiffs to prove that they have a right to the 1/5th undivided share in the suit property and for which, they will have to prove their relationship with Shivling. The plaintiffs are not before the trial Court praying for a separate issue to be framed, when the burden lies on them. The request of the defendants to frame an issue need not be entertained for the reason that issue No.4 would take care of that aspect and secondly, it is the outlook of the plaintiffs and not of the defendants that the plaintiffs will be in a better position to lead evidence.

4. Considering that the impugned order is neither perverse nor erroneous, the petition is dismissed.

(RAVINDRA V. GHUGE, J.)

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