

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4049 OF 2018

Panchnath Shivram Uddansinh

...Petitioner

Versus

Sunil Pandurang Uddansinh & Ors.

...Respondents

.....

Mr.Shrishail Sakhare for the Petitioner.

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**CORAM: MRS.MRIDULA BHATKAR, J.
DATED: JUNE 12, 2018**

P.C. :

1. By this Writ Petition, filed under Article 227 of the Constitution of India, the petitioner is challenging the order dated 24th January, 2018 passed by the learned 10th Jt. Civil Judge, Jr. Division, Solapur, below the application at Exhibit 109 in Regular Civil Suit No. 702 of 2012.

2. The plaintiffs i.e., respondent nos. 1 and 2 have filed a Regular Civil Suit No. 702 of 2012 for partition and declaration against respondent nos. 3,4, and 5. The petitioner is a third party and he is a son of the brother of the plaintiff's grandfather. The land was initially owned by Gangaram i.e., original person, and it

was partitioned 50% between two brothers in the year 1974. However, the area of 22 Acres and 5 Ares is shown less in the name of his father Shivram, who died in the year 1977.

3. The learned Counsel for the petitioner has submitted that he has no concern with inter-se partition between the plaintiff and the defendants and he is not challenging the Gift Deed, which is an issue between the plaintiff and the defendants. He has further submitted that the petitioner wants to protect his father's share of 22 Acres and 5 Ares, which is shown excess in the suit property and, therefore, he is a necessary and proper party to adjudicate the case. He has relied on the judgment of the Hon'ble Supreme Court in the case of ***Sumtibai & Others vs Paras Finance Co. Mankanwar W/o. Parasmal Chordia (D) & Ors.***¹

4. Heard submissions. Perused the impugned order and record. The partition is effected between two brothers Shivram and Krishna in the year 1974 and accordingly, half share was given. However, if the petitioner has any issue in respect of that partition and he wants to reopen the partition, then it is necessary for him to

¹ Appeal (Civil) No.117 of 2001 decided on 4th October,2007.

file a separate suit. If the petitioner is challenging the encroachment of 22 Acres and 5 Ares, which is wrongly shown in the name of Krishna and then Pandurang, then he may file a separate suit for declaration and injunction or possession, which is required as per the facts. The presence of the petitioner is not at all necessary to adjudicate and decide the issue in the suit.

5. In the case of ***Sumtibai & Others***(*supra*), the Hon'ble Supreme Court has observed that if a third party shows some semblance of title or interest in the property in dispute, he can certainly file an application for impleadment and by adding such person, the Court can avoid multiplicity of the proceedings. In the said case, the suit was filed by the plaintiff for specific performance of a contract for sale. The plaintiff had entered into an Agreement with one Kapoor Chand, who claimed that it is a self acquired property, for which specific performance was sought. Kapoor Chand had entered into a contract with some other respondent. During the pendency of the suit, Kapoor Chand died and his legal heirs moved an application under Order 22 Rule 4(2) read with Order 1 Rule 10 of the Code of Civil Procedure praying that they should be permitted to file additional written statement and also be

allowed to take such pleas which are available to them. The trial Court rejected the application against which a revision was filed, which was also dismissed by the High Court. Hence, the Special Leave Petition was filed. The facts of the case and interest shown by the legal heirs was totally different than the present case. The ratio laid down in the case of ***Sumtibai & Others***(*supra*) is not at all applicable to the present set of facts. I do not find any illegality in the order dated 24th January, 2018 passed by the learned 10th Jt. Civil Judge, Jr. Division, Solapur.

6. Hence, Writ Petition is dismissed in limine.

(MRIDULA BHATKAR, J.)