

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2391 OF 2018

Sarjerao Shankar Shinde

..... Petitioner

VERSUS

Mrs. Shalan Sitaram Bankar & Ors.

..... Respondents

Mr. Rajesh More for the Petitioner.

Mr. Ajinkya Udane for the Respondent nos. 1 and 2.

CORAM : R.D. DHANUKA, J.

DATE : 29th AUGUST, 2018

P.C.

Matter is on board and is mentioned at 5 o'clock.

2. Learned counsel appearing for the petitioner seeks liberty to delete the name of respondent nos. 3 to 5 in view of the fact that the respondent nos. 1 and 2 are the contesting respondents and are already before this court. Leave to amend is granted. Amendment to be carried out within two days from today. Re-verification is disposed with.

3. By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 16th December, 2017 passed by the learned Joint Civil Judge, Senior Division, Khed-Rajgurunagar, Pune below Ex.134 thereby allowing an application for deletion of one of the property i.e. described at serial no.1(B) in the partition suit by the respondent no.1. The application was made on the

ground that the said property belongs to one of the respondent whose name is deleted by this order.

4. On the other hand it is the case of the petitioner that the said property which is deleted from the arena of the suit is HUF property.

5. It is not in dispute that the said brother who alleges to be owner of the said property did not apply for deletion of such property nor contended that the said property was his personal property and not the HUF property. The impugned order thus passed by the learned trial judge allowing the amendment deleting one of the property i.e. at serial no. 1(B) in the plaint in question is accordingly set aside.

6. Application for amendment (Ex.134) filed by the defendant nos. 1 and 2 is partly dismissed to the extent of the property described at serial no. 1(B) in the plaint which is deleted is concerned. The property will be part of the suit property.

7. Writ petition is allowed in the aforesaid terms. No order as to costs.

8. The respondent no.1 is directed to carry out amendment to the plaint in accordance with the order passed by this court today within two weeks from today.

9. It is made clear that this court has not expressed any views on the issue as to whether the said property at serial no.1B in the plaint is

HUF Property or individual property or not. All contentions of both the parties in respect of the said property are kept open.

10. The parties would be at liberty to lead evidence in this regard before the learned trial judge.

[R.D. DHANUKA, J.]