

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4808 OF 2017

Smt.Subhangi Baburao Mirajkar .. Petitioner
Vs.
Shri Ramchandra Ganpati Mirajkar and ors. .. Respondents

Mr.Y.P. Deshmukh I/b Mr.Rajesh Togrikar, for the Petitioner.
Mr.Parag Tilak, for Respondent No.1.

CORAM : M.S.KARNIK, J.

DATE : 13th DECEMBER, 2018

P.C. :

. Heard learned for the petitioner and learned Counsel for Respondent No.1. It is the case of the petitioner that the trial Court was not justified in rejecting the application filed by her below Exhibit 100. The petitioner is the daughter of the defendant No.1. The plaintiffs have filed the Suit for partition as well as possession of the suit property. According to the petitioner she is a necessary party. She claims to have an interest in the suit property by virtue of the oral partition between her father – viz. defendant No.1, brother and herself.

2. The trial Court has rejected the application on the ground that the plaintiffs are the best judge of their interest and therefore it is for them to choose their defendants from whom they claim relief. The trial Court held that to decide the questions involved in the suit completely and effectually, the presence of the third party is not necessary when she is not a proper party to the Suit.

3. It can thus be seen that the petitioner is claiming independent right in the suit property which has come to the share of defendant No.1. Suffice it to observe that whatever independent right the petitioner has, it is always open for the petitioner to adopt appropriate legal recourse against the defendant No.1 to establish the same. Learned Counsel for the petitioner submits that proceedings are already initiated against defendant No.1. The plaintiffs having chosen not to implead the petitioner, it is always open for the petitioner to contend that the decree eventually passed would not bind her as she was not party to the suit if any right created by her in the property exists.

4. With these observations, the petition is rejected.

(M.S.KARNIK, J.)