

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.1721 OF 2016

URMILA HANUMAN SONAWANE AND OTHERS
VERSUS
MANIK BAPPAJI DAKE AND OTHERS

...

Advocate for the Petitioners : Shri Munde Suresh W.
Advocate for Respondents 2, 3, 5 and 6 : Shri K.S.Salunke h/f Shri
Salunke Sudarshan J.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 29th April, 2019

Per Court:

1 The Petitioners are two married sisters, who are the Plaintiffs in RCS No.330/2012, which has been preferred for seeking partition and separate possession of the ancestral properties. So also, relief has been sought as against the Mutation Entry No.403. It is contended that when they preferred the suit, they were not aware about some of the properties having been sold by some of the Defendants to the third parties, namely, Maroti Sukhdev Tate, Mahadev Rajebhau Naikwade, Sachin Mahadev Naikwade and Amol Mahadev Naikwade (who was 17 years old when application exhibit 41 was filed on 05.11.2015).

2 The grievance is that the Trial Court has rejected the application Exhibit 41 by the impugned order dated 26.11.2015 by

concluding that there is insufficient evidence to indicate as to why these third parties need to be arrayed as the defendants.

3 The learned advocate appearing on behalf of Respondent Nos.2, 3, 5 and 6/ original defendants, submits that in the suit for partition and separate possession, third parties are not necessary to the proceedings. Reliance is placed upon the affidavit in reply filed by Manchak Sopan Dake on behalf of the said four defendants in which, it is stated that the Plaintiffs have not narrated the consequence of non inclusion of the third parties to the pending proceedings. It is further submitted that the defendants have taken a ground that the suit is not maintainable for non joinder of parties. It is further prayed that this petition be dismissed with heavy costs.

4 Having considered the submissions of the learned Advocates appearing for the respective sides, I have perused the petition paper book with their assistance. Respondent Nos.1 and 4 have not caused their appearance despite service of court notice.

5 The Petitioners/ Plaintiffs are apprehensive that their suit might get dismissed on the ground of non joinder of parties. Some of the defendants have pointed out the sale transactions and have identified the third parties, who have purchased some of the suit properties. It is also pleaded by some of the defendants that the suit would be rendered untenable for non joinder of the parties.

6 In the above backdrop, it cannot be ignored that these third parties are likely to take a stand that the judgment in the suit is not binding upon them as they have purchased the suit properties, not *pendente lite*, but prior to the lodging of the suit. This would, therefore, cause multiplicity of litigation.

7 The above aspects have been lost sight of by the Trial Court, which has merely proceeded on the conclusion that the plaintiffs have not narrated as to what would be the consequences of not arraying these third parties as the defendants.

8 In view of the above, this Writ Petition is allowed. The impugned order dated 26.11.2015 is quashed and set aside and the application Exhibit 41 is allowed.

9 The Petitioners shall carryout the amendment in the plaint by adding the third parties, on or before 14.06.2019 and shall also tender a freshly typed amended copy of the plaint on or before the same date. The Trial Court shall then issue notice to the added defendants so as to enable them to cause their appearance and participate in the trial of the suit.