

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5613 OF 2007

Shri Ganapati Chaganlal Birla (DIED)

1A. Smt. Pramilabai Ganapati Birla,
Age 68 years, Occ. Household,
R/o Loparli, Tq. & Dist. Nandurbar.

1B. Mr. Kushalchand Ganapati Birla,
Age 50 years, occ. Agriculture
R/o Koparli, Tq. and Dist. Nandurbar.

(Petitioners 1A, 1B are also petitioners
Nos.2 and 3, while Deft. No.1-C is
respondent No.1 Sanjay).

1D. Smt. Manorama Nandlal Rathi
(DIED)

1D1. Nandlal Ramdayal Rathi
Age major, Occ. Business,

1D2. Rajesh Nandlal Rathi
Age 34, Occ. Business,

1D3. Manish Nandlal Rathi
Age 32, Occ. Business,

1D4. Nita Nandlal Rathi
Age major, Occ. Household,

All R/o 189, Rathi Niwas,
Near Weekly Bazar, Near the
Statue of Apana Maharaj,
Jalgaon.

1E. Manorama Nandlal Rathi
(DIED)

1E1. Sau Ramakanya Arvind Bedere,
Age 44 Occ. Lic Agent
R/o Pramila Apartment,
442 Shivajinagar, Behind

Makanlal Bungalow, Pune 16.

1E2. Sau. Vidya Pravin Baheti
Age 39, Occ. Beauty Parlour,
C/o Dr. Pravin Baheti,
R/o Bhadgaon, Dist. Jalgaon.

1E3. Sau Usha Anil Malu,
Age 37, Occ. Household
C/o Anil Malu, At Post Pimpri
(Devkunth) Tq. and Dist. Jalgaon.

1E4. Dr. Chandrakala M. Jayaswal,
Age 32 years, Occ. Service - Govt.
Hospital, At Post Sultanpur, UP

2. Sau. Pramila Bai Ganapati Birla
Age 60 Years, Occ. Household
R/o Koparli, Tq. and Dist. Nandurbar

3. Shri Khushalchand Ganapati Birla
Age 42 years, Occ. Agriculture,
R/o Koparli, Tq. and Dist. Nandurbar

4. Navin Khushalchand Birla
age 18 years, occ. Agriculture,
R/o Koparli, Tq. and Dist. Nandurbar

..Petitioners

Versus

1. Sanjay Ganapati Birla (DIED)

1A Vidya Sanjay Birla
Age 50 years,

1B Chetan Sanjay Birla
Age 35 years,

1C Rahul Sanjay Birla
Age 30 years,

Respondents 1A to 1C, Occ. All
Medical Practitioners, All R/o
Shahada, District Nandurbar.

2. Manakchand Chhaganlal Birla,

Age 57 years, Occ. Agriculture,
R/o Koparli, Tq. and Dist. Nandurbar

3. Pratapsingh Pandit Jirase,
Age years, Occ
R/o Badyane, Tq. & Dist. Nandurabar.

FORMAL PARTIES

4. Smt. Chandrabhagabai Keshavlal
Somani, age 77 years, Occ. Household
R/o Pimprala. Tq. and Dist. Jalgaon.

5. Smt. Indubai Motilal Mandora,
Age 55 years, Occ. Household,
R/o 7, Bungalow, Aranmangar,
Mumbai.

..Respondents

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Advocate for Petitioner : Shri Mantri R.R. a/w Shri Sancheti R.R.
Advocate for Respondents 1 to 3 : Shri Natu Sharad V.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: July 04, 2019

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ORAL JUDGMENT :-

1. The petitioner / original defendant in Special Civil Suit No.70 of 1993 is aggrieved by the order dated 31.8.2007, by which, application Exhibit 292, filed by the plaintiff seeking leave to amend the plaint by adding Gut No.36/2 in the common hotchpotch has been allowed.

2. By an ad-interim order dated 29.9.2007, this Court has stayed the suit. By a further order dated 4.7.2008, the petition was

admitted and the interim order was continued. Consequentially, a suit of 1993 has been stayed by this Court.

3. I have considered the strenuous submissions of Shri Mantri, learned Advocate for the petitioners and and Shri Natu on behalf of the respondents. Shri Mantri has strenuously criticized the impugned order on the ground that the recording of oral evidence was closed and the matter was listed for advancing oral arguments. The suit was already 14 years old and the trial Court could not have permitted the plaintiff to add the said property. Due diligence expected under the proviso to Rule 17 under Order VI of the CPC, has been ignored. An irreparable damage would be caused to the defendants.

4. I find from the record and as has been pointed out by Shri Natu, learned Advocate for the plaintiff that the plaintiff who was a practicing Doctor and is now deceased, had specifically averred in paragraph No.6 that Gut No.36/2 was purchased by him from his professional income from Shri Vinayak Daga Patil on 11.7.1984 for Rs.9,000/-. Subsequently, RCS No.119 of 1992 was filed by Ananda Daga Patil and Gut No.36/2 is the suit property in the said suit. This would indicate that the said parcel of land was purchased by the plaintiff from his professional income.

5. I find from the written statements of the defendants that they have contended that Gut No.36/2 is not the self acquired property of the plaintiff and is an ancestral property. Based on such pleadings, the trial Court has framed an issue as to whether the plaintiff can prove that Gut No.36/2 is a self acquired property. Shri Natu also submits that as the said property was being disputed and an issue was framed, he found it appropriate to seek permission to include the said property in the common hotchpotch without prejudice to his pleadings in the plaint that it is a self acquired property. The defendants have already pleaded in their written statement that the said property is an ancestral property and should be added in the common hotchpotch.

6. I find that the trial Court has taken into account the above factors. It realized that Gut No.36/2 is a subject matter of dispute. An issue has already been cast and therefore, the request of the plaintiff to add the property in the common hotchpotch would not cause prejudice to any of the litigating sides. It being an equitable order, I do not find that the said order could be branded as being perverse or erroneous.

7. This petition being devoid of merits is, therefore, dismissed. Rule is discharged.

8. Since the suit is 26 years old, the trial Court is directed to decide the said suit as expeditiously as possible and in any case, on/or before 25.10.2019. If found necessary, the trial Court would proceed with the matter on day-to-day basis and the learned Advocates for the respective sides would extend their best cooperation.

9. The litigating sides shall appear before the Court of the learned Civil Judge S.D., Nandurbar on 29.7.2019. The plaintiff shall carry out the amendment on/or before the said date and since it can be conveniently carried out, a freshly typed copy of the amended plaint is dispensed with.

(RAVINDRA V. GHUGE, J.)

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akl/d