

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

17 WRIT PETITION NO.8331 OF 2018

MADHUKAR VENKAT BHANGAWAD
VERSUS
SHANTABAI NAGORAO BHANGAWAD AND OTHERS

...

Advocate for Petitioner : Mr.Deshmukh Sachin S.
Advocate for Respondent Nos.1 to3 : Mr.Kale Gopal D.
Advocate for Respondent Nos. 4to6 :Mr.Shaikh Majit S.

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CORAM : M.S.KARNIK, J.

Dated: August 19, 2019

PER COURT :-

Learned counsel for the petitioner seeks leave to withdraw this petition with liberty to file fresh application before the Trial Court for impleading the petitioner as necessary party.

2. The learned counsel for the respondents did not oppose the withdrawal but vehemently opposed grant of any liberty for filing fresh application.

3. The learned counsel for the petitioner would submit that the Trial Court has framed issue No. 2-E in following terms :

"2-E) Whether def - prove that, defendant No. 1 executed will deed in favour of Madhukar Venkat Bhangawad on 20.1.2014 ?"

He would submit that the petitioner would, therefore, be necessary party.

4. According to the learned counsel for the petitioner when the application was heard by the Trial Court, Advocate for the petitioner was not present. Learned Counsel for the respondents on the other hand would submit that in the suit for partition, as defendant No. 2, who is father of the petitioner has raised the contention about the Will dated 20.1.2014 executed by defendant no. 1 in favour of the petitioner, the petitioner is not necessary party. He would submit that the present suit is filed for partition and separate share and the petitioner has no right to seek any relief as he is not entitled to a share.

5. In my opinion, the request made by the learned counsel for the petitioner for withdrawal of the petition with liberty to file fresh application, appears to be reasonable, as, in the application made earlier, the petitioner could not be represented. In this view of the matter, if a fresh application is made by the petitioner for his impleadment, the trial Court to consider the same on its merits without being influenced by the observations made in the order dated 7.3.2018. All contentions of the

respondents to oppose the application are kept open. The petition is accordingly allowed as withdrawn, with liberty as prayed for.

6. Parties to act upon authenticated copy of this order.

(M.S.KARNIK)
JUDGE

mahajansb/