

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

38 WRIT PETITION NO.12543 OF 2019

NAGNATH MANIKRAO PAWALE AND ANOTHER
VERSUS
KAMAL MITHU DOLAS AND OTHERS

...
Advocate for Petitioners : Mr. V. S. Bedre

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 14th OCTOBER, 2019.

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PER COURT :

1. Petitioners / original plaintiffs in RCS No. 267 of 2013 are aggrieved by the order dated 27.06.2019 passed by the trial Court, by which, application Exhibit-76 filed by third party applicants, has been allowed and they have been permitted to be impleaded as defendants in the suit.

2. The learned advocate for the petitioners has strenuously criticized the impugned order. He draws my attention to the fifteen grounds formulated in the memo of the petition. It is submitted that though Chandrabhagabai was the daughter of Manik, who had

about six children, Chandrabhagabai had died issueless. It is contended that the husband of Chandrabhagabai i.e. Kashinath was having three wives. The first wife Sakharbai had two daughters and two sons. Chandrabhagabai died issueless about 30 years ago. The third wife Vijaya @ Sakharbai has three sons and one daughter.

3. The third party applicants contend that they are the children of Kashinath and Chandrabhagabai.

4. In my view since the suit is for partition and separate possession of the ancestral property, all the persons who fall within the meaning of an undivided family or would have a claim to the ancestral property, will have to be added in the pending litigation. No doubt, the third party applicants will have to prove that they are the biological children of Kashinath and Chandrabhagabai. If they fail to establish this aspect, it would be proved that they have played a mischief on the Court. However, if it is established that they are the biological children, they would have a right to

the property from the share that would have come to Manik / Chandrabhagabai subject to any impediment in law.

5. In view of above, I do not find that the impugned order could be termed as perverse and erroneous. Needless to state, if evidence is led by the third party applicants and any of the litigating parties who have closed their evidence, seek leave to adduce further evidence to the extent of the third party applicants, the trial Court would consider such a request.

6. This petition is therefore disposed off.

(RAVINDRA V. GHUGE, J.)

vsm/-