

((1))

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

WRIT PETITION NO.14094 OF 2018

1. Vaishali w/o Balasaheb Todmal,
Age 38 years, Occu. Labour
2. Apeksha d/o Balasaheb Todmal,
Age 17 years, Occu. Education
3. Pratiksha d/o Balasaheb Todmal,
Age 16 years, Occu. Education
4. Walmik s/o Balasaheb Todmal,
Age 14 years, Occu. Education

Nos.2 to 4 are minor, u/g of
their real mother i.e. Petitioner No.1
Vaishali Balasaheb Todmal,

All R/o Sarolabaddi, Tq. Nagar,
District Ahmednagar.

... PETITIONERS
(Orig. Intervenors)

VERSUS

1. Jalindar s/o Dagdu Todmal,
Age 71 years, Occu. Agril.
R/o Jeur Baijabai,
Tq. and Dist. Ahmednagar
2. Sau. Vatsalabai Goraksh Todmal,
Age 60 years, Occu. Agri. & Household
R/o Jeur Baijabai,
Tq. and Dist. Ahmednagar
3. Janabai Bajirao Sase,
Age 55 years, Occu. Agril.
R/o Katral, Tq. Rahuri,
District Ahmednagar.

... RESPONDENTS
(No.1 Orig. Plaintiff,
Nos.2 & 3 Orig. Defts.)

((2))

.....
Ms Sayalee Nyayadhish, Advocate holding for
Mrs. Charuta S. Deshmukh, Advocate for petitioners
Shri D.G. Nagode, Advocate for respondents No.2 and 3
.....

CORAM : R.G. AVACHAT, J.

DATED : 20th SEPTEMBER, 2019.

JUDGMENT :

Rule. Rule made returnable forthwith and heard finally with the consent of learned counsel for the parties.

2. Challenge in this Writ Petition is to the order dated 20.7.2018, passed by Jt. Civil Judge, Senior Division, Ahmednagar below application Exh.27 in a suit, being Regular Civil Suit N.215/2017. By the impugned order, the application preferred by the petitioner, seeking intervention as plaintiffs in the said suit, came to be rejected.

3. Heard learned counsel for the parties. The suit has been filed for setting aside the sale deed dated 27.1.2017, executed by late Laxmibai in favour of defendants No.1 and 2/ respondents No.2 and 3 herein. A prayer for partition and separate possession of the plaintiff's share in the suit land, has

also been made.

4. Facts, necessary to decide this Writ Petition are :-

Bhivaji was the common ancestor. He had five sons. One of the sons namely Barku died during the lifetime of Bhivaji. Barku was survived by his widow Laxmibai and three daughters namely, Vatsala, Janabai and Rukminibai. Vatsala and Janabai are the defendants in the suit (respondents No.2 and 3 herein). Rukminibai is no more. The plaintiff claims to be the husband of deceased Rukminibai. It is the case of the plaintiff that, Rukminibai had a son from him. He is, however, no more. Bhivaji effected partition of the family properties in his lifetime. He, however, reserved the share of his deceased son Barku. He then gave Barku's share to Laxmibai by effecting necessary entry in the revenue record.

5. As such, the suit land belonged to the legal heirs of deceased Barku. The legal heirs of deceased Barku are – Laxmibai, defendants No.2 and 3 and the plaintiff, being husband of Laxmibai's deceased daughter Rukminibai. It is the case of the plaintiff/ respondent No.1 that the defendants No.1 and 2, taking

advantage of illiteracy of Laxmibai, got executed from Laxmibai, sale deed of the suit land in their name on 10.6.2002. The said sale deed has been challenged in the suit with a prayer for partition and separate possession of the suit land.

6. The petitioners moved application Exh.27, seeking intervention in the suit. The petitioners claimed that, deceased Rukminibai had a son by name Balasaheb. The petitioner No.1 claims to be the widow of Balasaheb . The petitioners No.2 to 4 are said to be minor children of the petitioner No.1 and the deceased Balasaheb. The plaintiff/ respondent No.1 is alleged to have suppressed these facts from the plaint.

7. The intervention application was supported by affidavit. The plaintiff/ respondent no.1 did not raise any objection to allow the said application. The defendants No.1 and 2, however, resisted the application, contending that, the petitioners/ applicants have not obtained any heirship certificate to indicate to be the heirs of deceased Rukminibai.

8. Learned counsel for respondents No.2 and 3 strongly resisted the petition.

9. The trial Court rejected the application, observing that, the petitioners are not the necessary parties to the suit. The petitioners have a dispute with the plaintiff/ respondent No.1. If they are added as parties to the suit, the trial will be embarrassed.

10. In my view, the trial Court erred in rejecting the application. The trial Court was oblivious of the fact that the suit is basically for partition and separate possession.

11. Laxmibai and her three daughters inherited the suit land by virtue of succession to late Barku. Plaintiff is the husband of late Rukminibai. The plaintiff admits in the plaint to have had a son from his wedlock with Rukminibai. The said son is no more. The interveners claimed to be the Class I heirs of the deceased son of the plaintiff and Rukminibai. Necessarily, the interveners got right, title and interest in the suit land, if land is held to have originally belonged to late Barku. It is reiterated that, this being a suit for partition and separate possession, the interveners become necessary parties to the suit. True, the interveners could have claimed intervention in the suit by adding them as defendants. It appears that, the trial Court rejected the application since the

petitioners wanted to join as plaintiffs in the suit. The trial Court ought to have found the interveners to be necessary parties to the suit and, therefore, should have allowed the application directing them to join as defendants in the suit.

12. In this view of the matter, the Writ Petition needs to be allowed. The same is, therefore, allowed. The order dated 20.7.2018 is set aside. The application Exh.27 is allowed, with a direction to the trial Court that the petitioners/ applicants be made party – defendants to the suit. Rule made absolute in above terms.

(R.G. AVACHAT)
JUDGE

fmp/-