

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12765 OF 2018

Arunabai Ashok Badgujar

Petitioner

Versus

Vaijantabai Hiralal Badgujar & others

Respondents

Mr.G.S. Rane advocate for the petitioner

Mr.P.B. Patil, advocate for Respondent Nos.3 to 7

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CORAM : **RAVINDRA V. GHUGE, JUDGE**

(Date : 12th MARCH, 2019)

PER COURT :-

1 On 11.2.2019, I had passed the following order:-

" 1. A genealogy chart is placed before the Court. Learned Advocate for the petitioner submits that he would place a complete genealogy tree on record for assistance. Liberty granted to add the genealogy chart at page No.45.

2. Vandanabai, who claims to be the second wife of Hiralal after he divorced his first wife Vaijayantabai, claims that her share flows from the share of Hiralal. She has one son - Suyog, born out of the said relation. The petitioner claims to have purchased a part of land S.No.298/1, from Surdas Waman Badgujar.

3. I, therefore find it necessary to trace the involvement of this Surdas in the partition of properties of the family flowing from Tanga or his brothers. If Surdas

had not acquired any share, which would have come to the share of Hiralal, then Vandanabai would not be a necessary respondent. However, if Surdas has derived his share from Hiralal, then Vandanabai, as a third party, would be required to be added as per the impugned order.

4. Learned Advocate for the petitioner seeks time to trace out the source of the share of Surdas.

5. As such, at the request of the petitioner, S.O. to 12.3.2019 in the Urgent Admissions Category. Liberty is granted to serve the respondents by Speed Post A.D. with promptitude. ”

2 Shri Patil, learned Advocate has appeared on behalf of contesting respondent Nos.3 to 7, which includes the third parties i.e. respondent Nos.6 and 7, who have been added to the proceedings pending before the Appellate Court, vide the impugned order dated 27.9.2018. He has extensively canvassed on behalf of Vandanabai and Suyog and prays for the dismissal of the petition by imposing costs of Rs.25,000/-.

3 As additional affidavit has been filed by the petitioner, that leads to an answer to the question, which I had formulated in paragraph No.3 of the order reproduced above. The petitioner is said to have purchased the land ad-measuring 0.45 Are and 0.60 Are in Gut No.298/A/1 by virtue of two independent sale-deeds

executed with the Legal Representatives of deceased Surdas.

4 The petitioner, therefore, claims to have purchased some property from the share of Surdas, which has nothing to do with Tanga and Vitthal. Hiralal, Motilal and Rajjulal are the three sons of Tanga, besides three daughters. When the partition took place earlier, share of Vitthal, Tanga and Surdas were apportioned. RCS No.44/2007 was filed by Vaijantabai who is admittedly the divorced wife of Hiralal and Pravin is a biological legal heir. The third party Vandanabai is the second legally wedded wife of Hiralal and Suyog is the son born from the said marriage.

5 It is a crystallized position in law that a third party can be added as a defendant, if the share of the third party is prima facie visible in the pending litigation and if the Court concludes that without the addition of the third party, the case cannot be adjudicated upon.

6 It is an admitted position that the petitioner, appellant in RCA No.27/2015, is aggrieved on account of the Judgment of the trial Court dated 2.3.2010, by which the property purchased by her from the LRs of Surdas has been apportioned to the share of Hiralal, Motilal and Rajulal and one share of Hiralal is apportioned to Pravin, who is the legal heir of Hiralal from the first wife.

7 The grievance of the petitioner is that, her share which is purchased from the legal heir of Surdas should not have been apportioned to Hiralal, Motilal and Rajulal. If, in her appeal, it is concluded that her share is distinct and apart from the dispute raised by Vaijayantabai, who claims a share from Hiralal for her son Pravin, the land purchased by the petitioner – appellant would be excluded from the decree and hence that share would not be available either for Hiralal, Rajulal or Motilal. If this can be the conclusion, Vandanabai will have to institute a separate suit only against Hiralal, Vaijayantabai and Pravin, so as to ensure that one share is retained by Vandanabai, who has also a legal son Suyog.

8 Considering this peculiar aspect, I am of the view that the appellate Court should have decided the application Exhibit 31 along with the main appeal for the reason that, firstly, if the appellant's appeal is allowed, thereby excluding her share apportioned to Hiralal, Motilal and Rajulal, Vandanabai will have to institute a fresh suit for securing her share flowing from Hiralal. Secondly, if the appellate Court dismisses the appeal filed by the appellant, opportunity can still be granted to Vandanabai and Suyog to initiate an appropriate proceedings for carving out their share which would flow from the share that has

come to Hiralal and admittedly will get a right to claim one share from Hiralal.

9 Considering the above, the impugned order dated 27.9.2018 is quashed and set aside. Application Exhibit 31 filed by Vandanabai and Suyog shall be considered along with RCA No.27/2015. Liberty is granted to Vandanabai and Suyog to address the appellate Court; while it decides RCA No.27/2015. Needless to state, if the appellate Court allows the appeal on its merits, it would grant liberty to Vandanabai and Suyog to lodge an independent claim as may be permissible under the CPC for securing their share through the share of Hiralal.

**(RAVINDRA V. GHUGE),
JUDGE**