

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3199 OF 2019

1. Santoshi @ Pallavi d/o Shivraj Deshmukh,
Age-38 years, Occu-Household,
R/o Dharmabad, at present Amrawati,
Tal.Amrawati, Dist.Amrawati,
2. Madhavi d/o Shivraj Deshmukh,
Age-33 years, Occu-Govt.Service (P.S.I.)
R/o Dharmabad, Tq. Dharmabad, Dist.Nanded,
at Present Lonawala, Tq.Mawal, Dist.Pune,
3. Gitanjali d/o Shivraj Deshmukh,
Age-30 years, Occu-Private Service,
R/o Dharmabad, Tq. Dharmabad,
Dist. Nanded,
At present Pune.

PETITIONERS

VERSUS

Shivraj s/o Bhagwanrao Deshmukh,
Age-66 years, Occu-Agriculture,
R/o Mudhol, Tq.Mudhol,
Dist.Adilabad

RESPONDENT

Mr.S.B.Bhapkar, Advocate for the petitioners.
Mr.P.S.Paranjape, Advocate for the respondent.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 21/09/2019

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioners are 3 married biological sisters, who are the plaintiffs in Spl.C.S.No.12/2000 . They are aggrieved by the order of the Trial Court dated 16/11/2018 vide which their application Exh.Nos.437 and 445, seeking leave to add 2 properties in the common hotchpotch and add purchasers *pendente lite* in the suit, have been rejected.

3. The record reveals that though these petitioners were plaintiffs in the suit for the last 18 years during which litigation journey, their mother Sulochana, who was the first plaintiff, passed away, they have not added survey numbers 256 and 257 at village Brahmangaon, Tal. Mudhol in the common hotchpotch. It is also revealed from the record that Sulochana passed away after filing her affidavit in lieu of examination in chief dated 18/04/2013. Till her death on 02/08/2015, the cross examination was not completed on affidavit Exh.265. Since she passed away, petitioner No.1 Santoshi @ Pallavi has filed her affidavit in lieu of examination in chief at Exh.317, on 07/11/2015.

4. Notwithstanding that the learned Advocate for the respondent, who is the biological father of these 3 petitioners, has strenuously

opposed this petition, it appears that as these petitioners are married daughters and are residing in their marital homes, it cannot be ruled out that they may not be having the knowledge of the existence of Survey Nos. 256 and 257. No doubt, it was expected that these petitioners should have mentioned in application Exhs.437 and 445, the circumstances in which they gathered knowledge of the existence of these 2 parcels of land. However, there are some pleadings in paragraph No.3 of Exh.437 which would indicate that they got the knowledge of these 2 parcels after the defendant No.1 / father sold these 2 parcels to about 17 persons vide 9 registered sale deeds dated 16/02/2018.

5. It is well settled that if some of the properties are left out of the common hotchpotch, the suit is likely to suffer and the plaintiffs or the litigating sides, as the case would be, are likely to lose their share in such properties. Rather than proceeding with the said case with such a permanent deficiency, this Court could as well impose heavy costs on the plaintiffs so as to compensate the defendant.

6. Though it appears from the dates and sequence of events that the suit is now 19 years old, the fact remains that these plaintiffs seek to assail the sale deeds dated 16/02/2018 and it is only plaintiff

No.1, who has tendered her affidavit in lieu of examination in chief on 07/11/2015 and the defendants have still not initiated the cross examination. As it is, there are 9 defendants in the suit, 8 of them having not been arrayed as the respondents in this petition on the contention by the petitioners that they are formal parties. The trial in the suit is likely to take some time notwithstanding the fact that the adjudication has been expedited under the orders of this Court.

7. In view of the above I called upon the learned Advocate for the petitioner to state as to whether these 3 petitioners would agree to deposit Rs.25,000/- as costs, keeping in view that one petitioner is a Police Sub Inspector and another petitioner is in private service, the learned Advocate for the petitioners submits that he would leave it to the Court. The learned Advocate for the respondent appearing in this matter submits that the respondent would agree to receive the costs and the amendment could be permitted only if a specific time schedule is fixed since he travels all the way from Adilabad, State of Telangana to attend the proceedings at Nanded, State of Maharashtra.

8. In view of the above, this petition is partly allowed. The impugned order dated 16/11/2018 is quashed and set aside.

Applications Exh.437 and 445 are partly granted with the following directions :-

[a] The plaintiffs shall deposit a total amount of Rs.25,000/- (Rs.Twenty Five Thousand only) before the Trial Court on or before 05/10/2019 and an extension of time of even a single day shall not be permitted. If the amount is not deposited, this order shall stand recalled and the impugned order dated 16/11/2018 shall stand restored automatically.

[b] After the costs are deposited, original defendant No.1, who is the biological father of these petitioners, would withdraw the said amount without conditions.

[c] These petitioners would carry out the necessary amendment to the plaint on or before 18/10/2019 and shall also tender the freshly typed amended copy of the plaint on the same date and there shall be no extension of time by a single day.

[d] The Trial Court would then issue notice to the added 17 purchasers. The petitioners shall have the notice served on these 17 purchasers by publishing the notice in a Telugu newspaper Daily "Sakshi", Adilabad Edition, which would cover the place of residence of these 17 purchasers.

[e] The added defendants shall file their written statement and tender their documents within 45 days from the date of the publication of notice in the newspaper. Adjournment on this count would be refused by the Trial Court.

[f] If required, the Trial Court would re-draft the issues considering the pleadings of the added defendants and plaintiff No.1, Santoshi @ Pallavi will be at liberty to tender an

additional affidavit in lieu of examination in chief considering the new issues and the pleadings of the added defendants. The earlier affidavit Exh.317 would also be a part of the examination in chief.

[g] Considering that there are 3 plaintiffs and about 25 defendants, by the consent of the parties, the Trial Court would endeavour to decide Spl.C.S.No.12/2000 within 12 months from the date of the framing of the issues.

9. Rule is made partly absolute in the above terms.

(Ravindra V.Ghuge, J.)