

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

WRIT PETITION NO.1320 OF 2018

VASANT WAMANRAO KULKARNI  
VERSUS  
VIJAY WAMANRAO KULKARNI AND ANOTHER

...

Advocate for the Petitioner : Shri Kulkarni Krishna K.

Advocate for Respondent 1 : Shri Solshe Vinesh C.

...

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

**DATE :- 28<sup>th</sup> March, 2019**

**Per Court:**

1 On 05.02.2018, this Court had passed the following order :-

"1 The Petitioner is aggrieved by the order dated 10.10.2017 passed by the Trial Court by which, the application Exhibit-45 filed by the Petitioner/ original Defendant No.1 in RCS No.165/2012 seeking addition of the property, has been rejected.

2 The Petitioner/ original Defendant No.1 is the real brother of the original Plaintiff. The contention is that the suit is preferred by the Plaintiff for seeking partition and separate possession with regard to the ancestral property. The father of the Plaintiff and the Petitioner had purchased an immovable property, which is Municipal House No.462 situated at Latur, from the income of the ancestral property. Hence, the said house property cannot be termed as being a self acquired property.

3 Consequentially, the said property needs to be placed in the common hotchpotch since the suit has been filed for partition and separate possession of the ancestral properties. A specific issue at Sr.No.4 with regard to whether, the suit is bad for non inclusion of all joint family properties, has also been framed. Exhibit-45 has

- been rejected only on the ground that the Petitioner is desirous of filling up the lacuna.*
- 4 *Issue notice to the Respondents returnable on 16.03.2016.*
- 5 *Copies of the petition paper book for issuance of notices shall be supplied on or before 13.02.2018, failing which, this petition shall stand dismissed without reference to the Court on 14.02.2018.*
- 6 *Until the returnable date in this matter, the Trial Court shall adjourn RCS No.165/2012."*

2 I have heard the learned Advocates for the Petitioner / original Defendant No.1 and Respondent No.1/ original Plaintiff. Respondent No.2 has not caused an appearance despite service of court notice.

3 The issue is as regards the prayer of the Petitioner that the Plaintiff be directed to add House Property No.462 situated in Latur in the common hotchpotch in RCS No.165/2012, which is filed for seeking partition and separate possession.

4 Following are the issues cast by the Trial Court :-

- "1. *Whether, the plaintiff proves that the suit property is the ancestral and joint family property?*
2. *What are the shares of both parties in the suit property?*
3. *Whether plaintiff is entitled to partition and separate possession of his share in the suit property?*
4. *(Deleted).*
5. *What order and decree?*
- 3A. *Whether defendant No.1 proves previous partition in year 1976?*
4. *Whether suit is bad for non-inclusion of all joint family properties?"*

5           There is no dispute that the Plaintiff has contended of having placed all ancestral properties in the common hotchpotch and House No.462 is not included in the properties put up for partition.

6           The Petitioner contends that House No.462 is the property, which was purchased by the father of the Plaintiff and Defendant No.1, in the name of the wife of the Plaintiff Smt.Kalindi. The funds for purchasing this property were generated by the parents of these two real brothers. Per-contra, the Plaintiff submits that House No.462 is his self acquired property.

7           The issues would indicate that the Plaintiff has to prove that the suit properties are ancestral properties belonging to the joint family. He also has to prove that House No.462 is not required to be included in the common hotchpotch as it is his self acquired property. He also stands the risk of suffering an adverse order in the light of Issue No.4 if it is proved that House No.462 is the property purchased out of the funds from the ancestral property or funds generated by the parents of these two real brothers.

8           Since the Plaintiff has to prove that House No.462 is a self acquired property, the Trial Court would naturally deliver it's order on this aspect. If it concludes that it is a self acquired property, the claim of the Defendant would be negated. If it concludes that it is ancestral property or property purchased out of the funds generated from the ancestral

properties, the Plaintiff would suffer an order in view of Issue No.4. As such, in my view, from all angles, it is apparent that House No.462 is bound to invite an order of the Trial Court.

9           In the above backdrop, though an amendment is permissible at any stage, it would be inconsequential to permit the amendment and that too at a stage when the final arguments are being advanced by the parties.

10           Considering the above and keeping in view the law laid down by the Rajasthan High Court in *Nand Kishore vs. Dr. Naraindas and another, AIR 1977 Rajasthan 255* and in the matter decided by this Court in *Govindrao Gangaramji Ajmire vs. Dadarao @ Shrawan Gangaramji Ajmire and others, 2004 (4) Mh.L.J. 653*, I do not find that the Trial Court has committed any jurisdictional error or has delivered a perverse order rejecting the application Exhibit 45. This Writ Petition being devoid of merit is, therefore, dismissed.

11           Needless to state, the Trial Court would deal with the entire oral and documentary evidence and the rival pleadings of the parties while delivering it's judgment on all the issues framed.