

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 2617 OF 2016

Shri. Manoj s/o Sudhakar Paunikar & others

VS.

Shri. Ganpati s/o Kisan Paunikar and others

Office Notes, Office Memorandum of Coram,
orders
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's

Shri. C. F. Bhagwani, counsel for petitioner.
Shri. R. S. Kalangiwale, counsel for respondents.

CORAM : MANISH PITALE J

DATED : 04.11.2019

By this petition, the petitioners (original plaintiffs) have challenged order dated 28.09.2015 passed by the Court of Joint Civil Judge Junior Division, Nagpur (Trial Court), whereby application filed by respondents No.7, 8 & 9 (original defendants) for striking out their names from the array of defendants, has been allowed and petitioners have been directed to delete their names from the array of defendants.

2. It is contended on behalf of the petitioner that said order is erroneous, because the presence of respondents No.7, 8 & 9 is necessary, in view of the contents of the plaint filed on behalf of the petitioner. A perusal of the plaint in the present case shows that although there is absence of detail specification of the property which is subject matter of the suit, the over

all emphasis in the plaint indicates that the petitioners, who claim to be legal representative of one Sudhakar Paunikar, are concerned with the extent of their share in property that came to the share of the predecessor of Sudhakar Paunikar i.e. Kisna Paunikar.

3. It is the contention raised on behalf of the petitioner herein that an earlier decree passed in a suit filed by Sudhakar Paunikar i.e. their predecessor was obtained by suppression of material facts and misrepresentation and that such decree passed in Regular Civil Suit No.1231/2008 was not binding on them. The said suit was filed by Sudhakar Paunikar wherein Ganpati and Eknath were made defendants. It was claimed in the said suit, styled as a suit for partition, that appropriate share of the properties was required to be determined. In the said suit the competent court held that Sudhakar Paunikar had 1/3 share in the property that had come to the share of his predecessor i.e. Kisna Paunikar. It is claimed by petitioner that the said Eknath had nothing to do with the property in question and that only Sudhakar Paunikar and Ganpati Paunikar were the sons of Kisna.

4. The necessary backdrop to the said pleadings has been stated in the plaint in the present suit filed by the petitioners. It is pleaded that five persons namely Vitthal s/o Gangaram Paunikar, Kisna

@ Kisnu s/o Gangaram Paunikar, Shri Pandhari s/o Keshao Paunikar, Shri. Govinda s/o Keshao Paunikar and Shri. Ramkrishna Paunikar had jointly purchased an immovable property on 03.01.1942. Subsequently, Pandhari, Govinda and Ramkrishna sold their respective shares in the said property in favour of the said Vitthal Paunikar and his real brother Kisan @ Kisnu. It is further stated that on 11th September 1958 a registered partition deed was executed between the said Vitthal and Kisna whereby the said immovable property was partitioned equally between them. It was further stated that after the death of the said Vitthal, his sons i.e. respondents No.7, 8 & 9 herein inherited specific shares in the portion that had gone to Vitthal in the aforesaid partition deed dated 11.09.1958. It is also pleaded that only Sudhakar Paunikar i.e. predecessor of the petitioners and his brother Ganpati Paunikar inherited other half of the property which had gone to the share of Kisna in the partition deed dated 11.09.1958. It is undisputed that present suit, from which this Writ Petition has arisen, has been filed by the petitioners only in the context of the share in the property that went in favour of Kisna @ Kisnu in the partition deed dated 11.09.1958.

5. It is the case of the petitioners that the earlier decree passed in the suit filed by their predecessor Sudhakar Paunikar holding that the said Sudhakar Paunikar and Ganpati Paunikar as also one

Eknath had 1/3 share each in the property of Kisna was not binding on them, because it was allegedly obtained by misrepresentation and fraud. Even if the suit filed by the petitioner herein was to be decreed it would affect the extent of share in the property that came to the share of Kisna and it would not in any manner affect the property in the hands of respondents No.7, 8 & 9 which they inherited from the share that fell in favour of Vitthal in the partition deed dated 11.09.1958.

6. In this backdrop, it needs to be considered whether the impugned order passed by the Trial Court is sustainable or not. A perusal of the order shows that the Trial Court has indeed taken into consideration the backdrop of facts in which the present suit has been filed. The Trial Court has found that the petitioners have failed to show how the contentions raised on behalf of respondents No.7, 8 & 9 is unsustainable that they have no concern with the property, which is the subject matter of the present suit. An appropriate analysis of the pleadings in the suit filed on behalf of the petitioner would show that even if the suit was to be decreed, it would have no affect on the properties in the hands of respondents No.7, 8 & 9, since they have inherited the same as legal representatives of Vitthal, who himself got the said share in his name as per the registered partition deed dated 11.09.1958. In other words the respondents No.7, 8 & 9 claim their right in property

that came to the share of their predecessor on the basis of the partition deed dated 11.09.1958, which is the very document on the basis of which the shares herein are claimed by petitioners from the other half of the property, which came to the share of Kisna. Therefore, it becomes clear that the Trial Court analyzed pleadings in the correct perspective to come to the conclusion that the respondents No.7, 8 & 9 (original defendants No.7, 8 & 9) are neither necessary nor proper parties in the suit.

7. In view of above, it is found that there is no merit in the present writ petition and it is dismissed.

JUDGE

KOLHE