

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

940 WRIT PETITION NO.9956 OF 2017

GOPAL SHRIHARI NIRWADE AND ANOTHER
VERSUS
DAIVSHALABAI JANKABAI VITTHAL GUNDEWAD AND OTHERS

.....
Advocate for Petitioners : Mr. V.D. Gunale
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CORAM : V. K. JADHAV, J.
DATED : 15th JANUARY, 2020

PER COURT:-

1. Heard learned counsel for the petitioners.
2. The respondent-plaintiff has instituted the suit for partition, separate possession and perpetual injunction. During pendency of the suit, respondent No.1-plaintiff has filed an application Exh.83 seeking amendment in the plaint. Learned trial court by the impugned order dated 14.2.2017 has allowed the application with costs. Hence, this writ petition.
3. Learned counsel for the petitioners-original defendants submits that on earlier occasion during pendency of the suit, respondent No.1 plaintiff has filed an application Exh.73 for same amendment and the trial court has rejected the said application. Learned counsel submits that even though the respondent-plaintiff has received documents in respect of house property on 29.8.2015, he has filed an application Exh.83 on 8.9.2016 i.e. after a period of more than one year.

Learned counsel submits that respondent No.1-plaintiff has filed an application at belated stage. The respondent-plaintiff has failed to give details about the properties during her cross examination and as a consequence thereof, she has filed application Exh.83 for the said amendment. However, the trial court has not considered the same and allowed the application erroneously.

4. It appears that the respondent-plaintiff has instituted the suit for partition, separate possession and decree of perpetual injunction. It further appears that so far as earlier application Exh.73 preferred by the respondent-plaintiff for amendment in respect of insertion of the house property in the claim, the trial court has rejected the said application for the reason that the respondent-plaintiff has not submitted any document in respect of the said house property. However, the respondent plaintiff has filed an application Exh.83 alongwith list Exh.85. The trial court has observed that on perusal of the documents, prima facie, it appears that the house property bearing Gram Panchayat house No. 1111 was standing in the name of Shrihari Shamrao and subsequently, the names of defendant Nos. 2 and 3 are mutated in the revenue record. So far as the contention of the petitioners-defendants that other house property was never possessed and owned by deceased Shamrao is concerned, the same would be decided on its own merits. It is well settled that all family property must be brought in to the hotchpot while effecting partition. The suit for partition should comprise all the joint family

properties. In view of the same, I do not find any fault in the impugned order. Hence, I proceed to pass the following order:-

O R D E R

Writ petition is hereby dismissed.

(V. K. JADHAV, J.)

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