

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

WRIT PETITION NO.10195 OF 2018

SOJRABAI BALBHIM GAIKWAD AND ANOTHER
VERSUS
SATYABHAMA RAGHUNATH ADAGALE AND ANOTHER

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Advocate for the Petitioners : Shri R.C.Brahmunkar h/f Shri Jadhav N.L.

Advocate for Respondent 1 : Shri Chapalgaonkar Shailesh S.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 25th February, 2020

Per Court:

1 The petitioners/ original defendant Nos.2 and 3 in RCS No.50/2010, are aggrieved by the cryptic order dated 28.06.2018 passed by the Trial Court, suo-moto, after the recording of oral evidence in the suit was concluded and the matter was at the stage of final arguments.

2 I have heard the learned advocates for the petitioner and respondent No.1/ original plaintiff. Respondent No.2/ original defendant No.1 (Rambhau Kisan Kamble) has not caused an appearance in this matter despite service of court notice.

3 The original plaintiff (Satyabhama) claims to be the daughter of defendant No.1 (Rambhau), born to Sonabai out of her legal marriage with defendant No.1 (Rambhau). The suit was filed for seeking partition and possession over the share of the plaintiff in the property. Defendant

Nos.2 and 3, who are the petitioners herein, are said to be the purchasers of some shares in the suit property. The plaintiff contends that as her father (defendant No.1) desired a son, he developed relations with Kausabai and posing that she is his second wife, cohabited with her. It is the contention of the plaintiff that there was no legal necessity for Rambhau (father) to sell the suit property and it was only upon the instigation of Kausabai that Rambhau sold the property to the petitioners/defendant Nos.2 and 3.

4 There is no dispute about the fact that the learned Trial Judge has suo moto passed the impugned order, which reads as under :-

"On perusal of the evidence of parties it is seen that the second wife Kousabai of Defendant No.1 is alive. He is necessary party in suit for partition, as per admission of plaintiff that the defendant no.1 has married with Kausabai after the death of her mother. Hence plaintiff is hereby directed to add party to the suit to the Kausabai as defendant."

5 Since the recording of oral evidence in the suit was concluded, in the event, the Trial Court was of the view that the addition of Kausabai is necessary, the learned Trial Judge should have put this issue before the litigating sides and should have permitted them to address the Court as regards addition of Kausabai as defendant No.4. Instead of doing so, the learned Trial Judge has not only directed the addition of Kausabai, but has also observed that Rambhau had married

Kausabai after the death of Sonabai, first wife. Such conclusion as if the Trial Court is deciding the suit finally, should not have been drawn while directing the addition of Kausabai.

6 I find that though the addition of Kausabai would assist the Trial Court while deciding the suit, it would also enable the plaintiff to establish that Kausabai is not a legally wedded wife of Rambhau and that she had pressurized Rambhau to sell the suit property without there being any legal necessity.

7 In view of the above, this Writ Petition is disposed off.

8 Kausabai shall file her Written Statement within 30 days from the date of service of summons upon her. If required, the Trial Court would frame an additional issue considering the pleadings of Kausabai and then permit the litigating sides to lead additional evidence. The conclusion of the Trial Court in the impugned order that *“As per the admission of plaintiff that the defendant no.1 has married with Kausabai after the death of her mother”*, shall stand quashed and set aside.

9 As the suit is 10 years old, the Trial Court would endeavour to decide RCS No.50/2010 as expeditiously as possible and in any case, on or before 31.12.2020.