

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11060 OF 2021

Suryakanta w/o Angad Gutte,
Age : 61 years, Occu. Agricultural
and Household, R/o Village Mandva
(Parali), Taluka Parali Vajinath,
District Beed

PETITIONER
(Orig. sole defendant)

VERSUS

Mandodari w/o Bharat Darade
and four others

RESPONDENTS
(Orig. plaintiffs)

Mr. Rajendrraa Deshmukkh, Senior Advocate instructed by
Mr. Devang R. Deshmukh, Advocate for the petitioner

CORAM : MANGESH S. PATIL, J.

DATE : 11.10.2021

PER COURT :

Heard Mr. Deshmukkh, learned Senior Advocate for the
petitioner.

2. Leave is granted to correct number of suit mentioned in the
petition. The amendment to be carried out forthwith.

3. The petitioner is taking exception to the order passed by the
trial court in a suit filed by the respondents wherein he is a defendant,
thereby rejecting his application filed under Order VII Rule 11 (d) of the
Code of Civil Procedure.

4. The respondents have filed suit for partition. According to their averments, their mother Sumanbai was the real sister of the petitioner's husband. Both had simultaneously inherited the ancestral property and asserting their $\frac{1}{2}$ share in the suit property, they have claimed partition and separate possession by metes and bounds.

5. The petitioner contested the suit by her written statement (Exh-12). Though she has not disputed the genealogy and the relation between the parties inter se, she asserted that the suit property was exclusively inherited and was thus owned by her husband. Sumanbai, during her lifetime, had relinquished her share. It was specifically mentioned in the mutation under which the suit property was mutated in the name of the petitioner's husband. In view of such relinquishment, the respondents are not entitled to lay any claim to share the suit property.

6. By filing an application (Exh-14), the petitioner claimed that in view of the aforementioned facts and circumstances, the plaint ex facie was not maintainable and was liable to be rejected.

7. Learned Senior Advocate Mr. Deshmukkh would submit that the factum of relinquishment by Sumanbai stands established from a specific mention about it in Mutation Entry No.756 dated 13.08.1998. He would submit that since the date of such mutation in the year 1998, Sumanbai, during her lifetime, never raised any objection or asserted any

claim in the suit property. Unfortunately, she died on 09.04.2019 and after her demise, the respondents, who are her issues, are now putting forth a false claim. He would further submit that the respondents are entitled to inherit the properties from their father Patluba, who died on 04.09.1994 and by mutation entry No.240, their names were mutated in the place of their father on 01.10.1995. The learned Senior Advocate, therefore, submits that without there being any cause of action, the respondents have filed the suit and the plaint is liable to be rejected.

8. I have carefully considered the submissions and perused the record. It is trite that the plaint is not to be rejected under Order VII Rule 11 under clause (d) of the Code of Civil Procedure when there are disputed questions of fact. Obviously the reason being that the facts will have to be established on the basis of the evidence to be led and that can happen only during trial.

9. The petitioner is coming with a specific contention about respondents' mother Sumanbai having relinquished her share in favour of the petitioner's husband. Needless to state that there is nothing on record to demonstrate that the respondents are admitting the factum of such relinquishment. Apart from the fact that if really there is any such relinquishment, it has to be in writing and being a compulsory registerable document under Section 17 of the Registration Act, it is for the petitioner to produce it and prove the fact. One cannot prejudge that she would

succeed in establishing this fact. At thus juncture, when the relation between the parties is admitted and it is not the contention of the petitioner that the property, in which the respondents are claiming share, is not an ancestral property, it is indeed a matter which deserves a full-fledged trial. There is nothing in the plaint, which, prima facie, demonstrates that the suit is not maintainable or that there is no cause of action. I find no error or illegality in the order passed by the learned Judge rejecting the petitioner's application.

10. The Writ Petition is dismissed in limine.

[MANGESH S. PATIL]
JUDGE