

drp

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6041 OF 2020

1. Radhabai w/o Eknath Surwase PETITIONERS
Age – 53 years, Occ – Agriculture

2. Rajabhau Kashinath Ghode
Age – 39 years, Occ – Agriculture

Both R/o At Shivaji Chowk, Majalgaon
Taluka – Majalgaon, District - Beed

VERSUS

1. Sushma alias Sangita w/o Yashwant Solanke RESPONDENTS
Age – 46 years, Occ – Househodl
R/o Gangamasla, Taluka – Majalgaon
District – Beed

2. Venkatrao Vitthalrao Suryawanshi (WP Dismissed)
Age – 60 years, Occ – Agriculture

3. Ratnamala w/o Venkatrao Suryawanshi

4. Sunil s/o Venkatrao Suryawanshi

5. Sushil s/o Venkatrao Suryawanshi
Died (Through Lrs)

5.1 Suhas s/o Sushil Suryawanshi
Age – 21 years, Occ – Education

5.2 Suyog s/o Sushil Suryawanshi
Age – Minor, Through Guardian Mother
Aruna w/o Sushil Suryawanshi

6. Aruna w/o Sushil Suryawanshi

7. Kalpana Sunil Suryawanshi

8. Vatsalabai w/o Vitthalrao Suryawanshi

All R/o Kamkheda Taluka – Renapur
District – Latur
At present residing at Shahu Nagar,
Majalgaon, Taluka – Majalgaon
District – Beed

9. Ranjita d/o Ashokrao Shejul

10. Ashok s/o Sakharam Shejul

Both R/o Kharat Adgaon, Taluka – Majalgaon
District – Beed

11. Vijaykumar s/o Shahajirao Tamake
Age – Major, Occ – Agriculture
R/o Nava Mondha, Majalgaon
Taluka – Majalgaon, District – Beed

12. Nitin s/o Machhindra Kale
Age – Major, Occ – Agriculture
R/o Shivaji Nagar, Majalgaon
Taluka – Majalgaon, District – Beed

13. Nagesh s/o Suryakant Maske
Age – Major, Occ – Agriculture
R/o Shivaji Nagar, Majalgaon
Taluka – Majalgaon, District – Beed

14. Ramesh s/o Devidas Kure
Age – Major, Occ – Agriculture
R/o Nava Mondha, Majalgaon
Taluka – Majalgaon, District – Beed

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Mr. V. D. Salunke, Advocate for the petitioners

Mr. S. B. Solanke for Solanke and Solanke Associates, for
respondent No.1

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 22nd NOVEMBER, 2021

JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with

consent of learned advocates for the parties.

2. This petition impugns order dated 24th June, 2020 passed by Joint Civil Judge, Senior Division, Majalgaon below Exhibit-194 in Regular Civil Suit No. 79 of 2009, thereby rejecting the said application filed by the petitioners seeking their impleadment as defendants in the suit.

3. Regular Civil Suit No. 79 of 2009 came to be filed by respondent No. 1 – original plaintiff against her father and 12 other defendants for partition and separate possession claiming that the suit property is the ancestral property and, therefore, she has share in the same.

4. It is the case of the respondent No. 1 - plaintiff that she got married on 30th May, 1990. There was partition in respect of the suit property. Defendants No. 1 to 4, in collusion with each others, sold the property to other defendants. She, therefore, claimed one fifth share in the suit property. Application Exhibit-5 filed by the plaintiff seeking injunction was allowed by the trial court on 10th September, 2009.

5. Respondent No. 2 – Defendant No. 1 had filed Regular Civil Suit No. 65 of 2009 against the plaintiff and her husband Yashwantrao Solanke for perpetual injunction. Said suit came to

be allowed on 30th November, 2010, whereby present respondent No.1 and her husband were perpetually restrained from interfering with the possession of defendant No. 1 – respondent No.2.

6. The petitioners purchased 1 Hectare, 20 *Are* land from gut No. 192 on 7th March, 2011. When the petitioners came to know about pendency of the Regular Civil Suit No. 79 of 2009 filed by respondent No.1, they filed an application Exhibit-194 in the said suit seeking their addition as party defendants. Said application has been rejected by the trial court vide order dated 24th June, 2020, this order is impugned in the present writ petition.

7. Heard learned advocate for the petitioners and learned advocate for respondent No.1.

8. Learned advocate for the petitioners strenuously submitted that since the petitioners have purchased a portion of the suit land, their interest needs to be protected and, therefore, they are necessary parties to the suit and the trial court ought to have allowed application Exhibit-194. He, therefore, submitted the impugned order passed by the trial court below Exhibit-194 is liable to be quashed and set aside and the application Exhibit-194 deserves to be allowed. In support of his submissions, he

placed reliance on the judgment of the Supreme Court in the case of "*Savitri Devi V/s District Judge, Gorakhpur*", 1999 (2) SCC 577.

9. Learned advocate for the respondent No.1, on the other hand, supported the impugned order. He submitted that the principle of *lis pendens* will apply in the present case. Since the suit is filed for partition of the ancestral property, presence of the petitioners is not necessary for decision of the suit and the trial court has, therefore, rightly rejected the application Exhibit-194. He submitted that there is no merit in the petition and the petition is liable to be dismissed with costs.

10. Suit in question i.e. Regular Civil Suit No. 79 of 2009 came to be filed by the plaintiff on 10th June, 2009. The petitioners have purchased a portion of the suit property in the year 2011. Application Exhibit-194 was filed by the petitioners on 10th February, 2020, seeking their impleadment in the suit. Since the petitioners have purchased the property during the pendency of the suit the principle of *lis pendens* is applicable in the facts of the present case. The trial court has rightly held that the sale transaction is hit by section 52 of the Transfer of Property Act, 1882.

11. The plaintiff has claimed in the suit that the suit property is ancestral and joint family property and it be partitioned and the defendants have not denied that the suit property is the ancestral property. They have come out with a defence that the plaintiff, at the time of partition, which took place in the year 1995, accepted some amount and had relinquished her right in the suit property, therefore, she has no right to claim share in the suit property.

12. The decision in the case of *Savitri Devi (supra)* relied upon on behalf of the petitioners, is rendered on different facts. The defendants therein did not contest the matter. The Apex Court has held that if intervenor has cause of action against the plaintiff relating to subject matter of the existing action, the court has power to join the intervenor so as to give effect to the primary object of the order, which is to avoid multiplicity of actions. This judgment, since is rendered on different set of facts, has no application in the present case.

13. The trial court has rightly recorded a finding that the suit can be finally adjudicated on merits, in absence of the petitioners. The trial court has properly considered applicability of section 52 of the Transfer of Property Act to the facts of the case and was justified in coming to the conclusion that without

adding proposed parties as defendants, the question involved in the suit can be finally adjudicated. No merit is found in the challenge raised in the present petition to the impugned order. The writ petition, since devoid of any substance, is dismissed. Rule stands discharged. There shall be no order as to costs.

[NITIN B. SURYAWANSHI]
JUDGE

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