

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

20 WRIT PETITION NO. 11887 OF 2015

SUDHAKAR LAXMAN JAGTAP
VERSUS
LAXMAN MARUTI JAGTAP AND OTHERS

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Advocate for Petitioner : Mr. P. V. Barde h/f
Mr. P. D. Sangwkar.

Advocate for Respondent Nos. 1 & 2 : Mr. S. A. Deshmukh

Advocate for Respondent Nos. 3 & 4 : Mr. Mahesh K. Bhosle

Advocate for Respondent Nos. 5 to 7 : Mr. Mukund S. Patil

AGP for Respondent No. 8 : Mr. R. D. Sanap

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CORAM : V. K. JADHAV, J.
DATED : 01ST MARCH, 2021

PER COURT :-

1. By consent, heard finally at admission stage.
2. The petitioner/original plaintiff, in the pending appeal bearing Regular Civil Appeal No. 154 of 2010, had filed an application for adding his six sisters as party to the suit. The petitioner had instituted the suit bearing Regular Civil Suit No. 162 of 2006 for partition, separate possession and mesne profit. By judgment and decree dated 22.03.2010, the Joint Civil Judge, Senior Division, Osmanabad has dismissed

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the said suit with costs. Being aggrieved by the same, the petitioner/plaintiff has preferred said Regular Civil Appeal No. 154 of 2010 in which he had filed the application Exhibit 20 under Order I Rule 10 of the Civil Procedure Code for adding his six sisters as party to the suit. By the impugned order dated 26.10.2015 the District Judge-2, Osmanabad has rejected the said application.

3. Learned counsel for the petitioner submits that the trial court has recorded the finding in the affirmative to issue no. 5-a as to whether the suit is bad for non joinder of the necessary parties. Learned counsel submits that the petitioner is the son of defendant no.1 as as such, the daughters of defendant no.1 (sisters of petitioner-plaintiff) are necessary parties to the suit seeking a decree of partition and separate possession. Learned counsel for the petitioner has placed his reliance in a case ***Vineeta Sharma v. Rakesh Sharma and Others***, reported in (2020) 9 SCC 1, wherein, the Supreme Court has ruled that the daughters are necessary parties in a suit for partition and separate possession

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4. Learned counsel for the respondents submit that since the plaintiff has lost the suit, in the pending appeal in order to fill up the lacuna the plaintiff has filed the application for addition of the parties. Learned counsel submit that the trial court has recorded the finding in the affirmative to issue no. 5-a and the suit is dismissed mainly on the ground of non joinder of the necessary parties along with the other issues.

5. I have also heard learned counsel for the respondent-State.

6. It appears that the petitioner-plaintiff has instituted the suit for a decree of partition and separate possession in respect of the ancestral properties. Though the trial court has recorded the finding in the negative as to the nature of the suit properties as not the ancestral properties of the Hindu joint family, however, it is for the appellate court to re-assess the evidence in the pending appeal and in view of the same, the sisters of the petitioner/plaintiff (daughters of

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respondent no.1/defendant no.1) are the necessary parties. In the case of ***Vineeta Sharma*** (supra), the Supreme Court has recently ruled that in a suit for partition and separate possession, the daughters are necessary parties.

7. In view of the above, the order impugned is not sustainable in the eyes of law. Hence, the following order:

ORDER

- I. The Writ Petition is hereby allowed.
- II. The impugned order dated 26.10.2015 passed below Exhibit 20 in Regular Civil Appeal No. 154 of 2010 by District Judge-2, Osmanabad is hereby quashed and set aside.
- III. The application Exhibit 20 in Regular Civil Appeal No. 154 of 2010 is allowed in terms of its prayer clauses.
- IV. The Writ Petition is accordingly disposed off.

(V. K. JADHAV, J.)

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