

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1064 OF 2020

BHAUSAHEB NARAYAN AHER AND ANOTHER
VERSUS
PARAJI BHAURAO AHER AND OTHERS

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Advocate for Petitioners : Mr. Tukaram M. Venjane

Advocate for Respondent no.1 : Mr. V. K. Kalam

Advocate for Respondent no.5 : Mr. C. V. Bodkhe

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 09-12-2021

PER COURT :-

The petitioners by this petition challenge the impugned order passed by the Joint Civil Judge, Junior Division, Sillod, District Aurangabad, on application Exhibit-43 in Regular Civil Suit No. 5 of 2011.

2. Regular Civil Suit is filed by plaintiff – respondent no.1 seeking partition and separate possession of the ancestral property. Father of petitioners - respondent no.3 is party defendant no.2 in the said suit. Petitioners filed application Exhibit-43 claiming that their father original defendant no.2 has sold his share from the suit property to them on 01-01-2011 and the present suit is filed on 14-01-2011 seeking partition and separate possession of the ancestral property. According to the petitioners, since they are owners and possessors of the portion of the suit property, they are necessary parties.

3. The trial Court has rejected the said application on the ground that plaintiff has impleaded all the necessary parties to the suit. Petitioners-applicants are the sons of defendant no.2 Narayan Bhaurao Aher, hence, they are not entitled to get share in the suit property and therefore, they are not necessary parties to the suit.

4. Admittedly, the suit is filed for partition and separate possession of the respective shares of the plaintiff and defendants. In that view of the matter, for deciding the matter in controversy, presence of the petitioners is not necessary. The trial Court has rightly held that since the petitioners are the sons of defendant no.2, they are not entitled to share in the suit property, and therefore, they are not the necessary parties. There is no illegality or perversity in the order impugned in the present writ petition. Hence, the Writ petition is dismissed. No order as to the costs.

(NITIN B. SURYAWANSHI)
JUDGE

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