

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 1363 OF 2021

Bhikabhau Khushalrao Tayade Vs. Kamla Babarao Khandare and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri Amol K. Dobade, Advocate for petitioner.

CORAM : V.M. DESHPANDE, J.

DATE : 9th APRIL, 2021.

Hearing was conducted through video conferencing and the learned counsel agreed that the audio and visual quality was proper.

(2) Heard Shri Amol K. Dobade, learned counsel for the petitioner in extenso.

(3) This writ petition is filed challenging the order passed by the learned 6th Joint Civil Judge, Junior Division, Akola below Exhibit-21 in Regular Civil Suit No.167 of 2019, whereby the learned Judge of the Court below rejected the application filed on behalf of the petitioner under Order VII Rule 11(d) of the Code of Civil Procedure (CPC).

(4) It is the submission of the learned counsel for the petitioner that the Court below has erred in rejecting the application inasmuch as according to him, the suit which is filed in the year 2019 is barred by limitation. According to him, the respondents herein have executed a relinquishment

deed and on the basis of said relinquishment deed mutation is taken place in favour of the petitioner on 05.07.1998 and therefore, the suit is barred by limitation.

(5) The respondents herein are the original plaintiffs. They are married sisters of the petitioner. They filed a suit for partition, separate possession, declaration, permanent injunction and for mesne profit against the petitioner and their another married sister Smt. Vimal Deorao Ingle, who is not joined as petitioner in this writ petition. By filing the suit, the plaintiffs demanded partition and also sought declaration that the mutation entry in respect of suit property be held as null and void.

(6) After the summons were served, the petitioner appeared and filed an application (Exhibit-21) under Order VII Rule 11 (d) of the CPC stating therein that the father of the petitioner as well as respondents passed away on 03.11.1989 and the name of the petitioner is mutated in the revenue record on 15.06.1990. The suit is filed after a period of 29 years. Therefore, according to him, the suit is barred by limitation. It is stated before the Court by the learned counsel for the petitioner that as on today the written statement is not filed.

(7) Though the learned counsel assertively submitted that respondents/original plaintiffs have executed deed of relinquishment and have relinquished their right and share

in favour of the petitioner, the learned counsel for the petitioner was required to cut sorry figure when the Court asked him in respect of the averments made in that behalf in the application below Exhibit-21. Perusal of Exhibit-21 would show that no such averments were made in the application that the respondents/original plaintiffs have made any relinquishment and on the basis of such relinquishment, the disputed entry dated 15.06.1990 was made. If that be so, *prima facie*, it does not lie in the mouth of the petitioner that any such relinquishment deed was executed by the respondents. However, it will be always open for the respondents to point out and challenge the said relinquishment deed if such relinquishment is set-up in the suit by the petitioner.

(8) For deciding the question as to whether the suit is barred by limitation or not, the averments made in the plaint has its own importance. In paragraph No.4 of the plaint, which is available in the compilation of this writ petition, shows that on 02.03.2019 respondents/plaintiffs have demanded their share in the suit property, however that was refused by the present petitioner. The suit is filed in the month of April-2019. Therefore, on the face of averments made in the plaint it is crystal clear that the suit is filed well within limitation. Learned Judge of the Court below has rightly decided the application by rejecting the same by taking into consideration the law laid down.

(9) No case is made out for interference the writ petition is therefore dismissed. No order as to costs. The petitioner is directed to file written statement in the suit within a period of 60 days from today without fail.

JUDGE

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