

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4908 OF 2019

1. Sumanbai w/o Kalyanrao Kale
Age: 57 years, Occu: Household,
R/o. Jodparali, Tq. & Dist. Parbhani.
2. Yamunabai w/o Raosaheb Pangarkar
Age: 52 years, Occ: Household,
R/o. Tadpangri, Tq. & Dist. Parbhani. ...PETITIONER

VERSUS

1. Abarao s/o Baburao Shinde,
(Since deceased, through legal heirs
Petitioner No. 1, 2 and respondent no. 2 to 4)
2. Lilavati w/o Abarao Shinde
Age: 80 years, Occ: Household,
R/o. Khanpur, Tq. & Dist. Parbhani.
3. Gandharbai w/o Abarao Shinde,
Age: 75 years, Occu: Household
R/o. As above.
4. Saraswati d/o Abarao Shinde
Age: 49 years, Occ: Household,
R/o. As above.
5. Prabhakar s/o Sundharrao Awachar
Age: 56 years, Occ: Agri.,
R/o. Karegaon, Tq. & Dist. Parbhani.
6. Gajanan s/o Prabhakar Awachar,
Age: 27 years, Occ: Agri.,
R/o. Karegaon, Tq. & Dist. Parbhani.
7. Kailas s/o Prabhakarrao Awachar
Age: 37 years, Occ: Agri.,
R/o. Karegaon, Tq. & Dist. Parbhani.

8. Maharashtra Grami Bank,
Through its Branch Manager,
Branch at Basmath road, Parbhani.
9. Sub Registrar
Sub Registrar Office,
Administrative Building Parbhani,
Tq. & Dist. Parbhani.
10. Jyoti w/o Ramkishan Shinde
Age: 32 years, Occ- Household,
R/o. Khanapur, Tq. & Dist. Parbhani. ...RESPONDENTS

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Mr. Vikram S. Kadam, Advocate for the petitioners.
Mr. M.M. Patil (Beedkar), Advocate for respondent No. 3.
Mr. V.B. Anjanwatikar, Advocate for respondents No. 5 to 7.
Mr. A.T. Jadhavar, Advocate for respondent No. 10.

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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON: 4th AUGUST, 2022
PRONOUNCED ON: 11th OCTOBER, 2022.

ORDER :

1. Order passed by learned Civil Judge, Senior Division, Parbhani, below Exhibit-215 in Regular Civil Suit No. 98/2011 is impugned in the present petition.

2. The petitioners along with their real sister Jyoti Shinde/Respondent No. 10 filed suit against respondents/defendants for partition and separate possession claiming 1/4th share of respondent No. 10 and 1/7th share of petitioners No. 1 and 2 in the suit properties. The respondents/defendants resisted the suit by filing written statement.

3. In the suit petitioners/plaintiffs No. 2 and 3 filed application Exhibit-215 under Order 6 Rule 17 of Code of Civil Procedure, seeking amendment, contending that they came to know that defendant No. 3 has filed special civil suit No. 32/2016, in respect of plot no. 1 out of survey no. 12/2 situated at village Khanapur, which is ancestral property of defendant No. 1. The defendant has executed paper sale deed no. 3702/2007 and sale deed no. 3701/2007 in favour of Ramkishan Abasaheb Shinde and defendant No. 4, without consideration amount and the said plot is in possession of plaintiff No. 1 and defendant No. 4. Said plot being ancestral joint family property of plaintiffs no. 2 and 3 and defendants No. 1 and 2, it is necessary to add the same in the suit property and said property be brought into common hotch-potch and prayer in that behalf is required to be made in the present suit.

4. Plaintiff No. 1 opposed the said application by obtaining permission of the Trial Court. She objected to the maintainability of the application contending that said application cannot be filed by the plaintiffs No. 2 and 3 without consent of plaintiff No. 1. The property Plot No. 1 is the sole property of Plaintiff No. 1 and it cannot be subjected for partition as per

Section 14 of the Hindu Succession Act, 1956, the plaintiff No. 1 is absolute owner of said property.

5. The defendants No. 2 and 3 also opposed the said application stating that in view of proviso to Order 6 Rule 17 of CPC, application is not tenable. The defence in respect of property Plot No. 1 and non addition of all ancestral properties is taken by the defendants in written statement filed on 21.12.2011, at that time, plaintiffs got knowledge of the said fact, however, amendment was not sought at that point of time. The sale deed which is sought to be challenged by way of proposed amendment is already subject matter of Special Civil Suit No. 32/2016. They therefore claimed that application be rejected. After hearing the parties, the Trial Court has rejected the application. Hence, the present petition.

6. I have duly considered the rival submissions of learned advocate for the petitioners and learned advocates for the respondents.

7. Record indicates that application Exhibit-215 was filed by Plaintiffs No. 2 and 3 at the fag end of trial. The evidence

of the parties is already concluded and the matter is fixed for final argument. It is to be noted here that the matter is time bound as per the orders passed by this Court.

8. Defendants No. 3 and 4 have raised objection about the property sought to be added by way of amendment, in the written statement in the year 2011. Defendant No. 4 has raised objection that all the ancestral properties are not added in the plaint. Averment in respect of registered sale deed of plot No. 1 dated 30.10.2007 is also there in the written statement. It is therefore, clear that plaintiffs got knowledge of the said transaction when the written statement was filed in the year 2011.

9. The learned advocate for the petitioner has placed reliance on Rajbahaddur Jiyaram Yadav Vs. Prakash @ Pappu Jiyaram Yadav and Others, 2016(2) Mh.L.J. 639, wherein learned Single of this Court has held that 'though amendment was sought in a partition suit at the time of final argument seeking to add property which was excluded, said amendment is allowed in the interest of justice'.

In the case in hand, since the property stands in the

name of plaintiff No. 1 and already suit is pending between plaintiff No. 1 and defendants No. 2 and 3 and as the amendment as is sought by plaintiffs No. 2 and 3 is against the interest of plaintiff No. 1 and the application is filed without her consent, above ruling is not applicable to the facts of the present case.

10. In view of above facts, the Trial Court is justified in rejecting the application filed by the petitioners. This Court is not inclined to interfere in the order passed by the Trial Court, considering the fact that at the fag end of trial, application for amendment is moved. In the result, writ petition is dismissed.

11. The petitioners are at liberty to file separate suit in respect of said property or adopt any remedy as permissible in law.

[NITIN B. SURYAWANSHI, J.]