

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION 2838 OF 2018

Avinash Bhupal Parmaje and anr. ... Petitioners

V/s.

Smt. Shweta Udaykumar Parmaje and ors. ... Respondents

Mr.Ashutosh M. Kulkarni alongwith Mr.Siddharth Shitole, Advocates
for the Petitioners.

Mr.Kuldeep U. Nikam, Advocate for the Respondents.

CORAM : ROHIT B. DEO, J.

DATE : JUNE 10, 2022.

P.C.:

1. The Petitioners are third party Intervenors who unsuccessfully attempted to persuade the learned Tribal Judge to exercise jurisdiction under Order I Rule 10 of the CPC 1908, on the premise that the third parties are the son and daughter of Defendant 1- Bhupal.

2. The learned Trial Judge has declined to exercise jurisdiction under Order I Rule 10 on the premise that the third parties are illegitimate children of Defendant 1 and therefore their presence is not necessary in the suit for partition, either as necessary or proper parties.

3. I have repeatedly called upon the learned counsel for the original Plaintiffs to bring to my notice any admission of the third parties that they are illegitimate children. The query was put in

the context of the averments in the application preferred under Order I Rule 10 in which all that is stated is that the third parties are the children of Defendant 1-Bhupal.

4. Perusal of the order impugned would reveal that while deciding the application under Order I Rule 10 the learned Trial Judge has adjudicated on the status of the third parties. The Trial Judge notes the submission of the Advocate that the third parties are born from the wedlock between Defendant 1-Bhupal and his second wife. Presumably, it is on the basis of such submission that the learned Trial Judge records a finding that third parties are illegitimate children who shall be entitled to share only in the self acquired property and not in the ancestral property.

5. It would not be necessary to delve deeper in the broader question. Suffice it to note that there is absolutely no material on the record to jump to the conclusion that merely because the third parties are not born from the wedlock between Defendant 1-Bhupal and Defendant 4-Sarojini, they are necessarily illegitimate children of Defendant 1-Bhupal. The learned counsel for the Respondents 1 and 2 is emphasizing on the arguments purportedly advanced and noted by the learned Trial Judge. Suffice it to observe that on a question of fact of the nature involved, the submission of the counsel, assuming that such a submission was

made, has absolutely no relevance or value. The status as legitimate or illegitimate children cannot be decided on the basis of what is allegedly or purportedly submitted by the counsel in the court.

6. In my considered view, the third parties are proper if not necessary parties to the suit for partition. In any event, it would be only after evidence that the learned Trial Judge can come to the conclusion either way on the status of the third parties and their entitlement to claim partition during the lifetime of Defendant 1. The order impugned is manifestly erroneous and is set aside.

7. The petition is allowed. The order impugned is set aside. The Plaintiffs shall take steps to implead the third parties as Defendants 6 and 7. The learned Trial Judge is requested to expedite the suit.

(ROHIT B. DEO,J.)

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