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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13373 OF 2022

Shantabai Mahadu Gadhave

.. Petitioner

Versus

Kasabai Mahadu Gadhave through Power of
Attorney Dada Gajendra Satpute and Ors.

.. Respondents

.....

Mr. B.A. Lawate, Advocate for the Petitioner.
None for the Respondent

.....

CORAM : MILIND N. JADHAV, J.

DATE : 21st November, 2022

P.C.:

. Heard Mr. B.A. Lawate, learned Advocate appearing for the
Petitioner.

2. The impugned order dated 05.07.2022 passed below Exh.56
in RCS No.167 of 2015 reads thus:-

“Heard Arguments. Perused record. I have also considered the say filed by contesting parties. The Def. No.13 wants to be get transposed as plaintiff. The plaintiff is alive. She has not abandoned or withdrawn suit. The defendant No. 13 has same interest alive plaintiff. This is a suit for partition. The defendant no.13 is daughter of plaintiff. Her share can be also declared if the suit is decreed. Her right can be adjudicated along with plaintiff. For that she need not be added as plaintiff. In a partition suit, if decreed, the share of all parties are required to be drawn. Therefore, the prayer for transposition could not be allowed as condition under Order 23 Rule 1A are not satisfied. Moreover, the amendment also cannot be considered at it appears to be premature. Thus, both prayers are rejected. Cost in cause.”

3. Mr. Lawate submitted that the impugned order is passed without considering the provisions of Order 23 Rule 1A of the Code of Civil Procedure, 1908.

4. Perusal of Order 23 Rule 1A clearly suggests that the said provision can be invoked in the case of plaintiff having withdrawn or abandoned the suit proceedings and not otherwise. Admittedly, such is not a position herein and the plaintiff is admittedly contesting the suit.

4.1. In so far as the provisions of Order 1 Rule 10(2) are concerned, the same can be invoked in the event of any party having been joined improperly whether as plaintiff or defendant, in order to enable the Court to effectually and completely adjudicate upon the issues and only then such order can be passed for either striking out or addition of party.

5. In the present case it is seen that plaintiff has impleaded 13 Defendants who are entitled to the suit property in various denominations as per their entitlement. Perusal of original application filed by Petitioner (original defendant No.13) indicates that she supports the case of plaintiff.

6. In view of the above, since the plaintiff has not withdrawn from the suit proceedings nor abandoned them, application of Petitioner for transposition under Order 23 Rule 1A is not maintainable. Hence the order dated 05.07.2022 passed by the learned Trial Court has been correctly passed in accordance with law.

7. Mr. Lawate pointed out that the next date of hearing before the Trial Court is 29.11.2022. He submitted that since Petitioner (original defendant No.13) herein is supporting plaintiff's case, both of them would be filing evidence in common. He submitted that Petitioner and plaintiff be therefore permitted to file their evidence on or before 12.12.2022. Learned Trial Court shall permit the Petitioner and/or plaintiff to file their evidence / i.e. affidavit of examination-in-chief on or before 12.12.2022 and thereafter proceed further.

8. With the above directions, Writ Petition stands dismissed.

[MILIND N. JADHAV, J.]