

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

WRIT PETITION NO.1293 OF 2022

- 1) Ashok Atmaram Shire
Aged about-58 years,
Occupation-Agriculture.
- 2) Kunal Ashok Shire
Aged about-28 years,
Occupation-Service.
- 3) Ku. Payal Ashok Shire
Aged about-23 years,
Occupation-Education.
- 4) Sau. Pranita Ashok Shire
Aged about-56 years,
Occupation-Household.

All R/o Tambewar Layout,
Wadgaon Road, Yavatmal,
Tq. & Dist. Yavatmal.

..... **PETITIONERS**

...VERSUS...

Sau. Bhavana Sachin Kaore,
Aged about-26 years,
Occupation-Household,
R/o Bhupeshnagar, Near Prajapati
Nagar, Wadgaon Road, Yavatmal,
Tq. & Dist. Yavatmal.

..... **RESPONDENT**

Mr. S. C. Bhalerao, Advocate for Petitioners.
None for Respondent.

CORAM: ROHIT B. DEO, J.

DATE OF RESERVING THE JUDGMENT : 07.03.2022
DATE OF PRONOUNCING THE JUDGMENT : 22.03.2022

JUDGMENT:

The petitioners are the defendants in Regular Civil Suit 10/2017 which is instituted by the respondent – plaintiff seeking decree of declaration, partition and separate possession. The suit property is described in paragraph 2 of the plaint as agricultural field situated at Mouza Wadgaon Road, District Yavatmal.

2. Defendants 1 to 3 filed their written statement denying the claim of the plaintiff in its entirety. The defendants 1 and 2 claim to have received the suit property in partition dated 23.12.1986. As an alternative plea, the defendants 1 and 2 claimed that after the plaintiff married contrary to the wishes of the family, she relinquished her share and interest in the suit property in July, 2004. Defendant 4 who is the mother of the plaintiff took an additional plea which is that her husband – defendant 1 Ashok received certain additional properties in the partition dated 23.12.1986, and since the plaintiff has not claimed

any share or interest in the additional property in the name of her father defendant 1 Ashok, the suit seeks only a partial partition, and is therefore, not tenable in law.

3. The learned trial Judge framed issues on 26.02.2018 which are reproduced below:

1. *Whether the suit property is the ancestral property of the plaintiff and the defendants?*
2. *Whether the plaintiff has share in the suit property? If yes, what is the extent of her share?*
3. *Whether the suit is bad for non-joinder of necessary party?*
4. *Does the defendants prove that the plaintiff has relinquished her share in the suit property?*
5. *Whether the plaintiff is entitled for partition as claimed?*
6. *Whether the plaintiff is entitled for declaration as sought?*
7. *What order and decree?*

4. Defendant 4 preferred an application dated 16.12.2021 purportedly under Order 14 Rules 1 and 3 of the Code

of Civil Procedure (Code) seeking framing of additional issue in the following terms:

“Whether suit for partial partition is legal and tenable?”

5. The plaintiff contended that there is no question of partial partition since the plaintiff is restricting her claim to the agricultural field.

6. The learned trial Judge rejected the application seeking framing of additional issue vide order dated 18.12.2021 on the premise that the issues which are framed are sufficient to decide the suit. Although the order impugned does not specifically so record it is apparent that the rejection is *inter alia* on the premise that the issue which is already framed, and which is to the effect that, “whether the plaintiff is entitled for partition as claimed” takes within its sweep the objection. In my considered view, no fault can be found in the order of rejection of the application seeking to frame additional issue. The issue whether the plaintiff is entitled to partition is comprehensive. If according to the defendant 4 the suit is not maintainable since the suit is for

partial partition, the said contention can be urged and pressed on the basis of the existing issues. The apprehension of the defendant 4 that she would not be permitted to adduce evidence in the absence of a specific issue, is misconceived.

7. The defendants have also assailed the order dated 06.01.2022 whereby the learned trial Judge rejected the objection of the defendant for exhibiting the partition deed. During the course of the examination-in-chief of the plaintiff the certified copy of the partition deed executed in 1986 was produced on record. The defendants objected to exhibiting the deed of partition on the premise that the certified copy cannot be exhibited since partition deed is not a public document. The learned trial Judge noted that the partition deed is referred to by the defendants in the written statement. It is further observed by the learned trial Judge that since according to the plaintiff she is not in possession of the original partition deed, and has no means to produce the same, secondary evidence can be adduced. While the affidavit filed by the plaintiff in lieu of oral examination-in-chief is placed on record as Annexure-B, the further examination-in-chief does not appear to be on record. In this view of the matter, I would proceed on the

basis of what is culled out in the order impugned. The learned trial Judge has exhibited the partition deed since the very document is referred to and relied upon by the defendants and further on the premise that there is compliance of Section 65 of the Evidence Act since the original copy is not within the reach of the plaintiff.

8. The view of the learned trial Judge is not erroneous.

9. I do not see any reason to interfere in either of the orders impugned.

10. The petition is dismissed.

JUDGE

NSN