

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

Writ Petition No. 169 of 2022

Shri. Rajendra Govindrao Lokhande
Aged about 61 Years,
Occupation - Business,
R/o. Near Dr. Rao Hospital, Inside
Ambagate, Dahisath Road, Amravati.

... Petitioner

... Versus ...

- (1) Shri. Arvind Govindrao Lokhande
Aged about 56 Years,
Occupation - Service,
R/o. Near Dr. Rao Hospital, Inside
Ambagate, Dahisath Road, Amravati.
- (2) Sau. Kalpana Madhusudan Machale,
Aged about 64 Years,
Occupation – Household,
R/o. Near Dr. Jamdar Hospital, Mahal
Nagpur, Tq. & Dist. Nagpur.
- (3) Sau. Nanda Suhas Udupurkar,
Aged about 51 Years,
Occupation – Service,
R/o. Near Ultimate Fitness Gym, Shastri
Nagar, Akola, Tq. & Dist. Akola.
- (4) Sau. Kavita Subhash Sawalkar,
Aged about 48 Years,
Occupation – Household,
R/o. Ramkrushna Colony, Ajni Chowk,
Nagpur, Tq. & Dist. Nagpur.
- (5) Atharva Arvind Lokhande
Aged about 21 Years,
Occupation – Student,
R/o. Near Dr. Rao Hospital, Inside
Ambagate, Dahisath Road, Amravati.

... Respondents

Mr. K. N. Thakur, Advocate for the petitioner
Mr. A. M. Sudame, Advocate for the respondents 1 and 5

CORAM : ROHIT B. DEO, J.

DATED : 21-3-2022

ORAL JUDGMENT

Rule. Rule made returnable forthwith. The petition is heard finally with consent of the learned counsel appearing for the parties.

2. The petitioner is the plaintiff who has instituted Special Civil Suit 69/2015 seeking decree of declaration, injunction, partition and separate possession.

3. The subject matter of the property is Plot 231 admeasuring 1259 sq.ft. and the residential house constructed thereon which is situated at Mauza Peth, Amravati.

4. According to the plaintiff, he is the elder son and the deceased father of the plaintiff and the defendants, Mr. Govind Tatyrao Lokhande was running readymade clothes store. It is averred in paragraph 2 that it is the plaintiff who was “fully running the shop along with his late father”. In paragraph 3, it is averred that the suit property was purchased from the funds generated from the business of readymade clothes shop and was purchased by

Mr. Govind Lokhande for the benefit of the entire family and that the parties to the suit, therefore, have equal share in the said property.

5. The plaintiff moved an application, Exhibit 48 invoking Order I Rule 10 of the Code of Civil Procedure, seeking addition of Mr. Atharva Arvind Lokhande, who is the son of defendant 1, on the premise that Mr. Atharva Lokhande is claiming to be the owner on the basis of will executed by the father of the plaintiff, Mr. Govind Lokhande on 22-6-2011.

6. Several objections are raised to the said application, *inter alia* that the plaintiff was aware of the will when the suit was instituted in the year 2015, and therefore, the alleged claim against Mr. Atharva Arvind Lokhande is barred by limitation.

7. Whether the claim against Mr. Atharva Arvind Lokhande would be barred by limitation can only be adjudicated after the evidence is recorded. The nature of the property is blurred. In a given situation, if the Court comes to the conclusion that the property is ancestral, and therefore, Mr. Govind Lokhande could not have bequeathed the entire property in favour of Mr. Atharva Arvind Lokhande, the answer on the issue of limitation may perhaps be different than the answer which will have to be rendered if the Court

finds that the property was self acquired property of Mr. Govind Lokhande, in which event, the challenge to the will would be the primary and substantive relief and the question of partition as such would not arise.

8. I do not intend to delve deeper or to make any definite observation in view of the order which I propose to make lest there is any prejudice caused to the parties.

9. I am inclined to set aside the order impugned to the extent the plaintiff is denied the permission to implead Mr. Atharva Arvind Lokhande. However, it is clarified that the question of limitation is kept open since that question may have to be decided on the basis of evidence on record which would throw light on the nature of property and whether the main and substantive relief is partition or declaration that the will is illegal. In the premise, the petition is partly allowed and while the plaintiff is permitted to add Mr. Atharva Arvind Lokhande as defendant, the question of limitation is kept expressly open for the Court to consider and decide at the stage of final hearing.

10. The learned trial Judge is requested to expedite the suit.