

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12965 OF 2023

1. Vyankatrao s/o. Vithoba Kadam,
 2. Godawari w/o. Vyankatrao Kadam,
 3. Jaya w/o. Balbhim Mane .. Petitioners
- (Original Defendants No.1,2 and 6)

Versus

1. Sau. Yogita w/o. Dnyaneshwar Kadam,
 2. Ku. Durga d/o. Dnyaneshwar Kadam,
 3. Umakant s/o. Vyankatrao Kadam,
 4. Laxmikant s/o. Vyankatrao Kadam,
 5. Dnyaneshwar s/o. Vyankatrao Kadam .. Respondents
- (Original Plaintiff No.1 and 2 and
Defendants No.3,4 and 5)

Mr. Sharad S. Halkude, Advocate for Petitioners

CORAM : S. G. MEHARE, J.

DATE : 17-10-2023

PER COURT :-

1. Heard the learned counsel for the petitioners.
2. The petitioners are the original defendants Nos. 1, 2 and 6. They had filed application below Exhibit-18 in Special Civil Suit No.76 of 2022. They have objected that the plaintiffs No.1 is daughter-in-law and plaintiff No.2 was grand-daughter, were not

entitled to open the partition during the life time of the father. The another objection was that the mother, who is a natural guardian of a daughter, cannot be a next friend. Hence, the suit filed by the plaintiff through next friend/mother, is also not tenable. The mother has also claimed share.

3. The learned trial Court discussed the provision of Order XXXII, Rule 2 of the Code of Civil Procedure. It has also been observed that in the title clause of the suit, a minor Ku. Durga is shown to be represented through her natural guardian i.e. mother of minor daughter. It has been admitted that since the father was alive, the mother could not be the natural guardian of a child. However, the minor was represented by the natural guardian i.e. mother of the minor. He has discussed the fact that plaintiff No.1 Sou. Yogita had filed a suit against in-laws, brother-in-law, husband and sister-in-law; and hence, the application cannot be considered.

4. The learned counsel for the petitioners would submit that in view of Section 8 of the Hindu Succession (Amendment) Act 2005, the grand daughter has no right to claim the partition. Therefore, the suit itself is bad in law.

5. The Court has considered the facts of the case. Admittedly, the suit for partition was filed by the daughter-in-law and the granddaughter. The husband of the plaintiff No.1 is arraigned as defendant No.5. The application for dismissing the suit on the

grounds mentioned above was filed by original defendants No.1, 2 and 6. The husband and the father of the plaintiffs did not raise objection. His written statement is not yet filed. He may support the plaintiffs. If he would support the plaintiffs, he may be transposed as plaintiff and the suit may be considered. Therefore, this Court is of the view that unless he files his written statement and comes with a concrete stand, it would be inappropriate to consider that the suit is not tenable.

6. As far as the Hindu Succession Act is concerned, it is developing day by day and giving equal rights to the women in the properties of the Hindu Joint Family.

7. The facts and objections raised need detail examination on merit. Therefore, the suit cannot be thrown at the threshold. The Court did not find any substantial reason to allow the Writ petition. Hence, the Writ petition stands dismissed at the admission stage.

8. The defendants No.1, 2 and 6 are at liberty to raise all these grounds on merit.

**(S. G. MEHARE)
JUDGE**

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