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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9577 OF 2016

Rekha Yuvraj Kulkarni and Another

PETITIONERS

VERSUS

Vilas Moreshwar Panchabhai and Others

RESPONDENTS

.....
Mr. Prakash S. Paranjape, Advocate for the petitioners
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 19th JULY, 2023

ORDER :

1. This petition, filed under Article 227 of the Constitution of India, takes exception to the order passed by learned 2nd Joint Civil Judge, Junior Division, Shirpur below Exhibits-34 and 37 in Regular Civil Suit No. 10 of 2014, thereby rejecting the applications filed by the petitioners seeking permission to add them as parties in the suit.

2. Respondent No.1 – original plaintiff has filed the suit for declaration that the will deed executed by his father be declared as null and void and not binding on the share of the plaintiff in the joint Hindu family property and for perpetual injunction. The petitioners being real sisters of the plaintiff, filed applications

Exhibits-34 and 37 seeking their impleadment in the suit as parties, claiming that they have interest in the suit properties. The applications are rejected by the Trial Court on the ground that the suit is filed by the plaintiff for declaration and perpetual injunction and the suit for declaration that the will executed by his father be declared as unlawful and he has sought injunction against defendant No.3 - Branch Manager for not delivering payment of amount of fixed deposit and against defendant No.4 - Gram Sevak not to enter names of defendants No.1 and 2 in the record of rights.

3. Considering the nature of the *lis*, the Trial Court was of the view that the petitioners do not seem to be necessary parties to the suit. It is observed that even if the petitioners are not added as parties in the suit and decree is passed in favour of the plaintiff, it would certainly be executable. The Trial Court held that the plaintiff is the master of the suit being *dominus litis* and, therefore, he cannot be compelled to add parties against whom he is not claiming any relief.

4. The respondents though served with notice for final disposal, none appears for them.

5. After hearing learned advocate for the petitioners and on

going through the memo of writ petition, annexures and the impugned order, this Court is of the view that the impugned order is unsustainable in law and facts of the case.

6. Admittedly, in paragraph No.5 of the plaint, names of the petitioners are mentioned, being real sisters of the plaintiff. Even reference of the petitioners can be found in paragraph No.12 of the plaint. Respondent No.1 - plaintiff has claimed that the properties mentioned in the will deed are the joint Hindu family properties and though he has reserved his right to seek partition of the suit properties at a subsequent stage, still since, he has challenged the will deed executed by his father, the same may have bearing in the subsequent suit, if any, filed by the plaintiff or any other members of the family, for partition of the joint Hindu family properties. Since the petitioners claim to have interest in the properties mentioned in the plaint, Trial Court ought to have allowed their applications, as the petitioners are the proper parties to the suit. The impugned order passed by the Trial Court is, therefore, liable to be quashed and set aside and the writ petition deserves to be allowed. In the result, following order:

ORDER

A. Writ Petition is allowed in terms of prayer clause "b".

- B. Impugned order dated 6th February, 2016 passed by 2nd Joint Civil Judge, Junior Division, Shirpur below Exhibits-33 and 37 in Regular Civil Suit No. 10 of 2014 is quashed and set aside.
- C. The petitioners be added as party defendants in the suit.
- D. Since the suit is of the year 2014, hearing of the same is expedited.

[NITIN B. SURYAWANSHI]
JUDGE