

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6529 OF 2023

Parvati Mahadeo Patil ... Petitioner
Versus
Rajaram Ganpati Patil and Ors. ... Respondents

— —
Mr. Bhushan Walimbe for the petitioner
Mr. Drupad Patil i/by Mr. Sarvajit Patil for the Respondent.
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CORAM : SHARMILA U. DESHMUKH, J.

DATE : June 28, 2023.

P. C. :

1. Heard.

2. The Petitioner questions the order dated 9th January, 2023 rejecting the petitioner's application seeking impeadment in RCA No.15 of 2016.

3. The factual matrix is that the Respondent no.1 herein had instituted the Regular Civil Suit No.433 of 2014 against the Respondent Nos.2 to 6 before the learned Civil Judge, Junior Division, Islampur, praying for partition and separate possession and recovery of various agricultural lands, based on the Will of one

Radhabai Shivram Patil, who had bequeathed the property to her grandsons i.e. the Respondent Nos.1, 2, 3 and 6. While deciding the suit for partition and separate possession, the trial Court framed a issue as to whether the petitioner's-husband-Mahadeo Shivram Patil was in possession of the plaintiff's share in the suit property since the year 1990, which came to be answered in the negative. The suit was decreed by judgment and order dated 21st November, 2015 and partitioned to the extent of $\frac{1}{4}$ th share each. As against this RCA No.15 of 2016 was filed by the Respondent Nos.2 and 3, in which the Petitioner who is the wife of Mahadeo filed an intervention application which has been rejected. It is not in dispute that the Respondent Nos.2 and 3, who are the appellants in RCA No.15 of 2016 are the sons of Mahadeo and the Petitioner is the wife of Mahadeo.

4. Learned counsel appearing for the Petitioner points out that the application for impleadment is necessary in view of the finding which has been given on one of the issues framed by the trial court as regards the possession of Mahadeo over the extent of plaintiff's share since 1990. He would further submit that the said finding will come in the way of the Petitioner in event, any

proceedings are instituted claiming right in the property. In that view of the matter, he submits that even at the appellate stage, he can be impleaded as a party.

5. Learned counsel appearing for the Respondents submits that the suit in question was a suit for the partition, and it is only by reason of the pleadings in the written statement as regards Mahadeo Patil being in possession of the properties since the year 1990 in respect of the share claimed of the plaintiff that the issue in question came to be framed. He would further submit that the burden was cast upon the respondent nos.2 and 3-original defendants which burden was not discharged. He has taken this Court through the finding, which has been recorded by the trial Court in respect of the said issue. He would further submit that it is open for the Petitioner to file an independent appeal questioning the decree. He draws support from the provisions of Section 96 of the CPC and would submit that any aggrieved party can file an appeal upon obtaining the leave. He would further submit that in the suit for partition, the Petitioner is not a necessary party and the same position would continue even at the appellate stage. He would further submit that no purpose would be served by impleading the Petitioner even if considered as a necessary

party.

6. Considered the submission of the parties.

7. In a suit for partition and separate possession an issue came to be framed as regards the possession of Mahadeo Shivram Patil over the property to the extent of plaintiff's share since the year 1990. After analyzing the material and evidence which has come on record categorical findings have been recorded by the trial court holding that the property to the extent of the plaintiff's share was not in possession of Mahadeo Shivram Patil. The issue was by reason of a pleading by the Respondent Nos.2 and 3, who are the sons of Mahadeo. It is required to be noted that during the proceedings, Mahadeo was not impleaded as party to the proceedings and without him being impleaded the issue regarding his possession was framed and decided against him. Even if, the Respondent nos.2 and 3, the sons of Mahadeo were parties to the proceedings, it was necessary that Mahadeo be impleaded as a party, as any finding on that issue would have affected his rights. In spite of this position, neither the plaintiff nor the defendants in the proceedings moved any application for impeading Mahadeo as party. The suit being simplicitor for

partition could have proceeded to determine the share of the parties and that in that event it could not be said that the Petitioner would be a necessary party, inasmuch as, the outcome would not have affected the rights. However, by reason of the findings in respect of the possession of Mahadeo, who subsequently expired, the Petitioner being the wife of Mahadeo was entitled to claim share in the estate of Mahadeo.

8. The application has been moved under the provisions of Order 1 Rule 10 of CPC and has to be tested on touchstone of the Order 1 Rule 10. The provisions of Order 1 Rule 10 have been the subject matter of various decisions and the Apex Court in the case of ***Aliji Momonji & Co. Vs. Lalji Movji, [(1996) 5 SCC 379]*** has held that the parties who have direct and legal interest in the subject matter is required to be impleaded. In view of the decision of the Apex Court, in my opinion, the finding which has been rendered by the trial Court in respect of the share of the husband of the Petitioner would affect her rights.

9. Learned counsel appearing for the Respondent no.1 submits that it is open for the Petitioner to institute a separate

proceedings or an independent appeal. The purpose of Order 1 Rule 10, is to prevent the multiplicity of the proceedings and the powers under the Order 1 Rule 10 can be exercised *suo motu* or upon an application of the parties at any stage of the proceedings. The Petitioner has sought to be impleaded as a Respondent to the appellate proceedings. Presently, the issue before this Court is the rejection of the intervention application by the Appellate Court. The Appellate Court has held that in the peculiar circumstances of the case considering that the deceased–Mahadeo was stated to be in possession to the extent of share of the plaintiff over the suit property, he might have been joined party to the suit. This is precisely, what was required to be done before a finding as regards the possession of Mahadeo could have been rendered by the Trial Court. That the Petitioner being the wife of Mahadeo would definitely have right and interest in the property which was stated to be in the possession of Mahadeo and the defendant nos.2 and 3 have failed to substantiate during the proceedings.

10. In light of the above, in my opinion, the outcome of the proceedings will affect the right of the Petitioner and, as such, the intervention application of the Petitioner was required to be allowed.

The impugned order rejecting the application is unsustainable and is hereby quashed and set aside, as the impugned order is quashed and set aside, the application of the Petitioner's seeking impleadment stands allowed.

11. Writ Petition stands allowed in the above terms.

(Sharmila U. Deshmukh, J.)