



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1532 OF 2024

TUKARAM NAMDEO WAKURE AND OTHERS
VERSUS
BAPU NAMDEO WAKURE AND OTHERS

Mr. S. S. Wakure, Advocate for the petitioners

CORAM : R. M. JOSHI, J.

DATE : 24th JULY, 2024

PER COURT :-

1. Petitioner No.1 is defendant No.1 in R.C.S. No. 617/2017. He filed application Exhibit 94 to bring on record LR's of his sister Kamal Balaji Kadam (deceased). His application is rejected by the Trial Court. Hence, this petition.

2. Plaintiff has filed suit for partition, separate possession of the ancestral properties and also for cancellation of sale deed dated 27/08/2017. Defendant No.1 is the brother of plaintiff and that he filed written statement on 19/07/2018. Till August, 2023 he never disclosed to the Court that his sister Kamal is deceased and she has died leaving behind her two sons Krushna and Suresh (now deceased). He, therefore, filed application to bring Krushna and LR's of Suresh on record as defendants. The said application is filed on the ground that suit is for

partition of the ancestral properties and unless all the joint family members are party to the suit the same is not maintainable.

3. Learned Trial Court has rejected the application only on the ground that the application was not made immediately and the intention of the defendant No.1 is to prolong the proceeding.

4. It is settled law that suit for partition is not maintainable unless all co-sharers are joined as party to the suit. Once such fact is brought to the notice of the Court, it is incumbent on the part of the Court to permit joining/adding of such co-parceners/co-sharers as a party defendants to the proceedings. In the application for suit for partition or all plaintiff as well as defendant are to be treated as plaintiff. In such circumstances, there was no justification for rejection of the application.

5. In order to ensure that there is no defect in the suit for want of all necessary parties to the suit, the application Exhibit 94 stands allowed. However, since the application is filed at belated stage, the defendant No.1 is directed to pay cost of Rs.5,000/-. The amount of cost be paid to the High Court Bar Association Library, Aurangabad. The payment of cost is precondition for allowing the application. Cost be paid

within a week. If cost is not paid within one week, the application Exhibit 94 shall stand dismissed.

6. Petition is disposed off in above terms.

(R. M. JOSHI, J.)

ssp