



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2558 OF 2016

Bindu Madhav Ramacharya Mudgalkar And Others

VERSUS

Malhar Mandar Rajabhau Mudgalkar And Others

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Mr. D. J. Choudhary, Advocate for the Petitioners

Mr. M. P. Kale, Advocate for Respondents

Mr. P. N. Muley, Advocate for Respondent Nos. 2 & 3

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CORAM : R.M. JOSHI, J

DATE : JUNE 20, 2024

PER COURT :

1. By consent of both sides, heard finally at admission stage.

2. A short question arises in this Petition as to whether the learned trial Court was justified in refusing to frame issues with regard to the maintainability of the suit for non-joinder of necessary parties.

3. There is no dispute about the fact that the Respondents filed suit for partition in respect of the properties belonging to deceased Rajabhau. Defendants filed written statement and in paragraph 8 there is specific claim that daughters of Rajabhau are not joined as parties and as such, suit suffers for non-joinder of necessary parties.

4. In spite of the aforestated position, the learned trial Court has refused to frame issue of the maintainability of the suit for the non-joinder of the necessary parties. It is settled law that for the purpose of seeking partition, all members of joint family are necessary party and non-joinder of any one of them affects the maintainability of the suit. Though learned Counsel for the Plaintiff has sought to argue that the averments made in the written statement is vague, such submission cannot be considered at this stage though it would be open for the Plaintiff to substantiate the same during trial that suit does not suffer by non-joinder of necessary parties.

5. Having regard to these facts, the impugned order cannot sustain. As the result of which, Petition is allowed. Impugned order is set aside. Application Exh. 65 stands allowed. Trial Court to frame following issue:

“Whether the suit is not maintainable for want of non-joinder of necessary parties.”

(R. M. JOSHI, J.)

Malani