



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 105 OF 2024

- (1) Mahadev Ashruba Bhavar,
- (2) Savita Mahadev Bhavar,
- (3) Somnath Mahadev Bhavar,
- (4) Puja Mahadev Bhavar,
- (5) Chabubai Ashruba Bhavar

... PETITIONERS
(Ori. Respondents)

VERSUS

- (1) Saurabh Mahadev Bhavar,
- (2) Surekha Sunil Taware,
- (3) Pallavi Haridas Ghule

... RESPONDENTS
(Ori. Plaintiffs)

...
Mr. Tushar M. Tandale – Advocate for Petitioners

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CORAM : SANDIPKUMAR C. MORE, J.
DATE : 15th July, 2024

ORDER :

1. Heard learned Counsel for the petitioners on admission.
2. The petitioners who are original defendant Nos.1, 2 and 7 in Regular Civil Suit No.569 of 2022 had claimed rejection of the plaint in the aforesaid suit vide application (Exhibit – 12). However,

learned Civil Judge Junior Division, Ashti, Dist. Beed (hereinafter referred to as *“the learned Trial Court”*) vide order dated 22.02.2022 below Exhibit-12 in the said suit, rejected the application under Order VII Rule 11 of the Civil Procedure Code filed by the present petitioners.

3. According to learned Counsel for the petitioners, the plaintiff has filed a suit for partition in respect of the suit property which was original owned by one Ashruba Baburao Bhavar and therefore it was claimed that, it was his ancestral property. He further submitted that, Ashruba Bhavar died on 15.05.1986 and after his death the petitioners' names were entered into the record of rights of the suit property vide Mutation No.534 being Class-I heirs. Further, according to him, the present plaintiff being grandson of Ashruba Bhavar, during the lifetime of petitioner No.1, is not entitled for filing the suit for partition. Accordingly, he claimed that there was no legal cause of action for filing the suit available to respondent No.1/plaintiff. He also relied on the judgment of Hon'ble Apex Court in the case of UttamVs. Saubhag Sing and Ors., reported in *AIR 2016 SC 1169*.

4. It is significant to note that, though as per the aforesaid

judgment of Hon'ble Apex Court "*a grandson born in the year 1997, after the death of grandfather is not entitled to seek partition as his father, uncles and widow of deceased grandfather hold property as tenants in common and that on his date of birth the ancestral property is not joint family property*". However, the impugned order indicates that, after the death of Ashruba Bhavar names of defendant No.1 and his brother – Balu and widow of Ashruba Bhavar i.e. defendant No.7 were mutated in the record of rights of the suit property. Moreover, daughter of Ashruba Bhavar by name Sindhubai was also mutated. However, the learned Trial Court has found on the basis of 7/12 extract of the suit property that, there was partition amongst defendant No.1, his brother – Balu and defendant No.7. Further, Balu is not included in this suit and therefore, the plaintiff can seek partition from the present defendants. Apparently, there appears no perversity in the observation of the learned Trial Court which is based on the supporting documents in respect of the suit property. The judgment relied by the learned Counsel for the petitioners was also considered by the learned Trial Court, but in view of the aforesaid observation in respect of partition between defendant No.1 and his brother – Balu, it was not held applicable. As such, no substance

is found in the present application and the same stands dismissed at admission stage.

5. The Civil Revision Application is accordingly disposed of.

[SANDIPKUMAR C. MORE]
JUDGE