



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13663 OF 2023

Hanuman Vithalrao Shelke

VERSUS

Sheshabai Narayan Shelke And Others

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Mr. M. M. Patil (Beedkar), Advocate for the Petitioner

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CORAM : R.M. JOSHI, J

DATE : JUNE 13, 2024

PER COURT :

1. This Petition takes exception to order dated 21.08.2023 passed below Exh. 46 in RCS No. 201/2020.

2. Petitioner is original Defendant no. 2. Defendant No. 1 is his vendor. Plaintiffs are son and wife of Defendant No. 1 whereas Plaintiff No. 4 is mother. Suit is filed for seeking declaration that the sale deed executed by Defendant No. 1 in favour of Defendant No. 2 is not binding on Plaintiffs.

3. During the pendency of suit, Defendant no. 1 died. His LR's are already on record. Suman and Shantabai filed application Exh. 46 to bring themselves on record as co-plaintiffs and to bring on record Muktabai, their sister, as Defendant in this suit. It

is specifically pleaded in the application that suit properties are their joint Hindu family properties. It is also stated that the suit is pending for evidence and Plaintiff Nos. 1 to 3 have arrived at compromise with Defendant no. 2. On these averments, application is filed to join them as Plaintiffs and Defendants. This application is opposed by Defendant no. 2 by filing say. However, Plaintiffs did not oppose the said application.

4. Learned Counsel for the Petitioner submits that having regard to the nature of suit, which is filed for the declaration in respect of sale deed in question and injunction, Suman, Shantabai and Muktabai are not necessary parties to the suit. According to him, if at all they have to substantiate their claim in the joint family property, they have to file separate suit. It is further argued that Original Plaintiff have not consented for joining these females as co-plaintiff and hence, such order cannot sustain. As far as Muktabai is concerned, it is contended that since Suman and Shantabai were not Plaintiffs at the time of filing of the application, they have no right to ask Muktabai

to be joined as Defendant No. 3.

5. *Prima facie* perusal of the pleadings indicates that suit is filed for declaration about sale deed no. 2946/2020 dated 07.09.2020 executed by the Defendant no. 2 in favour of Defendant No. 1 in respect of the suit land and injunction restraining Defendant No. 1 from transferring and alienating suit land. The issues framed by trial Court indicate that the burden is cast upon the Plaintiffs to prove that the suit properties are joint Hindu family properties. Suman and Shantabai are claiming themselves to be members of the said joint family. Thus, it cannot be said that they are alien to the said issue involved in the present suit. This Court, therefore, finds no perversity in the order directing them to be joined as Plaintiff Nos. 5 and 6.

6. As far as objection raised by the Petitioner about they being joined as co-plaintiff is concerned, non filing of the response or raising objection by the Plaintiffs to the application filed by them indicates their consent for the same. As such, objection raised by the Petitioner to that extent also deserved to be rejected.

7. As far as Muktabai is concerned, this Court finds substance in the contention of the learned Counsel for the Petitioner that the Suman and Shantabai being not Plaintiffs when the application was made, they had no right to seek joining Muktabai as Defendant. Muktabai herself never applied for the same. As a result of which, order directing joining Muktabai as Defendant No. 3 deserves interference.

8. In view of the above, Petition is partly allowed. Order dated 21.08.2023 directing joining Muktabai as Defendant No. 3 is set aside.

(R. M. JOSHI, J.)

Malani