



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

904 WRIT PETITION NO. 1045 OF 2024

ANIL YASHWANT DESHMUKH

VERSUS

BALASAHEB @ VISHWAS YASHWANT DESHMUKH

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Advocate for the Petitioner : Mr. Sanket S. Kulkarni

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CORAM : ARUN R. PEDNEKER, J.

DATE : 02nd FEBRUARY, 2024

PER COURT:

1. Heard.
2. The defendants had filed an application for rejection of the plaint for partition filed by the plaintiff on account of non inclusion of some of the properties in the suit. It is the case of the defendants that plaintiff has filed the suit only with a view to harass the defendants. There is no cause of action to file the suit and that the plaintiff has not included all the properties of the joint hindu family, more specifically, it is contended that the plaintiff has withheld the property bearing Gat No.220 at village Kachruli, Taluka – Trimbakeshwar, District - Nashik and that it is purchased by the original *Karta*, in the name of the plaintiff on 01.11.1986. The defendants are having the share in the same. It is further case of the defendants that the plaintiff is claiming share in other properties, whereas suppressing the facts that the above property at Gat No.220 standing in his name, is a joint family property. The plaintiff has

responded to the submissions that he has claimed the partition of the properties, which are the joint family properties. The trial court, on consideration of the application, held that the jurisdiction has to be examined on the basis of the plaint and in the plaint he sought for partition of the joint family properties. The plaintiff has averred that the defendants have refused to partition of the suit properties due to which the suit for partition is filed. This is sufficient, as far as the claim of partition is concerned. As far as the exclusion of some properties from the partition is concerned, the trial court held that the partial partition of the joint family property is not unknown to law and it cannot be a ground for rejection of the plaint.

3. In the case of **Shivnarayan (Dead) By Legal Representatives Vs. Maniklal (Dead) Through Legal Representatives and others, (2020) 11 SCC 629**, the Hon'ble Supreme Court, at paras 29 and 30 has observed as under:

“29. The partial partition of property is well-accepted principle with regard to a joint family. In Mayne’s Hindu Law & Usage, 16th Edn. in Para 485 the following has been stated:

*“485. **Partition partial or total** – Partition may be either total or partial. A partition may be partial either as regards the persons making it or the property divided.*

***Partial as to properties.** - It is open to the members of a joint family to sever in interest in respect to a part of the joint estate while retaining their status of a joint family and holding the rest as the properties of an undivided family. Until some positive action is taken to have partition of joint family property, it would remain joint family property.”*

30. *Mulla on Hindu Law, 22nd Edn. also refers to partial partition both in respect of the property and or in respect of the persons making it. In para 327 the following has been stated:*

“327. Partial partition.- (1) A partition between coparceners may be partial either in respect of the property or in respect of the persons making it.

After a partition is affected, if some of the properties are treated as common properties, it cannot be held that such properties continued to be joint properties since there was a division of title, but such properties were not actually divided.

(2) Partial as to property.- It is open to the members of a joint family to make a division and severance of interest in respect of a party of the joint estate, while retaining their status as a joint family and holding the rest as the properties of a joint and undivided family.”

4. The plaintiff has specifically stated that the property, which the defendants have mentioned of Gat No.220 is a personal property of the plaintiff, due to which he has not put the same in the plaint. It is open to the defendants to initiate such proceedings or to have such course of action so as to establish that property at Gat No.220 is a joint hindu family property and proceed for the partition of the same. However, the present suit cannot be dismissed for non inclusion of property at Gut No.220.

5. The writ petition stands dismissed.

[ARUN R. PEDNEKER, J.]

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