



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.544 OF 2024

Sau. Lalita Yadavrao Raut and others .Vs. Amol S/o Yadavrao Raut and another

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri D.N. Mudgale, Adv. h/f Shri Y.B. Sonone, Adv. for petitioner.

CORAM : ANIL S. KILOR, J.

DATED : 25/01/2024

1. By the impugned order dated 24.04.2023 passed by the Civil Judge Junior Division, Morshi in R.C.S. No.18 of 2016, the application for rejection of plaint under Order VII, Rule 11 (a) of the Code of Civil Procedure, 1908 filed at the instance of defendant Nos.2, 6 and 7 came to be rejected.

2. The rejection of the plaint was sought on the ground that, there is no disclosure of the cause of action. Whereas, the learned trial Court has categorically observed that the plaintiff has specifically mentioned the cause of action as 28.10.2015 i.e. the date on which the defendant No.1 has executed the gift deed in favour of his second wife.

3. The case of the petitioner is that, the suit is for partition and separate possession and also for declaration

that the gift deed dated 28.10.2015 is not binding on the plaintiff.

4. It is the case of the petitioner that, the father of the defendant No.1 got the suit property vide partition deed dated 15.04.1988. The defendant Nos.3 to 5 are children of defendant No.1 and his first wife Minatai, who died in the year 1993 and after the demise of first wife, the defendant No.1 performed second marriage with defendant No.2 and the defendant Nos.6 and 7 are their children.

5. In the circumstances, the learned trial Court has observed that the defendant Nos.6 and 7 cannot be treated as illegitimate sons of the defendant No.1 and accordingly, the learned trial Court rejected the case of the petitioner that only after the death of the father, the sons can claim the share in the property.

6. Since the objection was on the ground that, no cause of action was disclosed and on satisfying that the cause of action has been disclosed by the plaintiff, the application came to be rejected.

7. In the circumstances, I do not find any illegality committed by the learned trial Court in rejecting the application. Hence, writ petition is **dismissed**.

JUDGE