



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

927 WRIT PETITION NO. 8799 OF 2024

PRAKASH LAXMANRAO MUNDE DIED HIS LRS NILAWATI
ALIAS NALINI MUNDE AND OTHERS

VERSUS

DATTATRYARAO KESHAVRAO MUNDE DIED HIS LRS DEEPAK
DATTATRAY MUNDE AND OTHERS

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Advocate for Petitioners : Mr. Joydeep S. Kadam
h/f. Mr. V.D. Salunke

Advocate for Respondent Nos. 1a, 1c to 1e, 3, 4, 6 to 8, 10, 11a to 11c :
Mr. P.B. Gapat

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CORAM : ROHIT W. JOSHI, J.

DATE : 15th JULY, 2025

P.C.:

1. The present petition is filed by the original plaintiffs in RCS No. 194/2012, which is pending on the file of the learned Joint Civil Judge, Senior Division, Osmanabad. The respondents are defendants. The parties shall be referred as plaintiffs and defendants hereinafter.

2. The plaintiffs and defendants are descendants of one Namdev who had three sons namely Keshav, Lalasaheb and Krushna. The plaintiffs are descendants of two sons Lalasaheb and Krushna. The defendants are descendants of Keshav.

3. It is the case of plaintiffs that in the year 1980, the suit properties which comprises of an agricultural land admeasuring 29 Acres 36 Gunthas in all, was partitioned between the three brothers in which each of them got 1/3rd share. The contention of the plaintiffs is that in terms of said partition they had become owners of the land to the extent of 19 Acres 38 Gunthas. The suit is filed for declaration of

ownership of the said 19 Acres 38 Gunthas land and for demarcation of the said portion of property as also for perpetual injunction restraining the defendants from obstructing possession of the plaintiffs over the said portion of 19 Acres 38 Gunthas.

4. The case of defendants who are descendants of Keshav is that there was arrangement in the year 1980, where under the three brothers started cultivating different portions of agricultural lands owned by the family, however, the arrangement, *inter se*, between the brothers does not amount to a partition.

5. The suit is being prosecuted in view of such stand taken by the parties with respect to the partition. In this context, during the course of cross-examination of defendant no. 4 who is witness no. 1 for the defendants, certain questions were being put to him with respect to further mutations of lands recorded in the names of deceased Keshav and his descendants i.e. the defendants in the suit. The plaintiffs had put questions with respect to further demarcation/partition of property, *inter se*, between the defendants. Leading further in the cross-examination, a question was put to the defendant no. 4 that Dattatrya /the defendant no. 1 received 0.66 HR land out of which 0.02 HR land was sold by him and with respect to remaining 0.64 HR land mutation entry was recorded in the names of his legal heirs vide mutation entry no. 31023. This question came to be disallowed by the learned trial Court on the ground that this fact was not pleaded in the plaint. This order is subject matter of challenge in the present petition.

6. As stated above, the controversy between the parties pertains the transaction of the year 1980. Whereas it is the case of the plaintiffs that there was a partition in the year 1980, the contention of the defendants is that there was no such partition but the arrangement was merely a makeshift family arrangement. In order to falsify the case of

the defendants, questions were being put in the cross-examination pertaining to further partitions in the family of defendants and some alienation made by defendants and their descendants.

7. Learned trial Court ought to have appreciated that parties are required to plead necessary facts constituting a cause of action. However, evidence by which the facts may be proved may not be pleaded. Order VI Rule 2 of the Code of Civil Procedure, specifically provides that pleadings must be in a concise form comprising of material facts on which the claim or defence of a party is based. The said provision further clarifies that evidence by which the facts have to be proved need not be pleaded. The pleadings in the plaint are sufficient to set up the case that according to plaintiff there was a partition in the year 1980, *inter se*, between the three brothers. The questions that are put are intended to demonstrate that all the three branches had accepted the partition. The question regarding further mutation and alienation could not have been disallowed for want of pleadings having regard to mandate of Order VI Rule 2 of the C.P.C.

8. In view of the above, the petition is allowed by permitting the petitioners/plaintiffs to put the question which is disallowed by the learned trial Court vide order dated 15.07.2024, to defendant no. 4 / defendant witness no. 1 in RCS No. 194/2012 pending on the file of the learned Joint Civil Judge, Senior Division, Osmanabad. No order as to costs.

[ROHIT W. JOSHI J.]