



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9751 OF 2024

Bhagirathibai Balaji Kature

...Petitioner

Versus

Namdev Mahadu Akangire and Others

...Respondents

- Mr. V. D. Gunale, Advocate for the Petitioner.
- Mr. Khanapure Kapil C., Advocate for Respondent Nos.1 to 5.
- Mrs. B. B. Gunjal, AGP for Respondent No.6 – State.

CORAM : AJIT B. KADETHANKAR, J.

DATE : MARCH 10, 2026

P. C. :

1. The respondent is the brother of the present petitioner. The petitioner lodged a Civil Suit before the learned Civil Judge, Senior Division, Ahmedpur for partition.

2. Mr. Gunale, learned counsel for the petitioner would submit that the ancestral land of the petitioner and the respondent was acquired by the National Highway Authority for the construction of Nagpur – Ratnagir National Highway, and compensation of ₹80,56,580/- was awarded against the land acquired. He would submit that the entire amount has been credited to the respondent and as such, the plaintiff has filed the suit for partition.

3. He would further submit that during the pendency of the suit, the petitioner filed an application seeking amendment to the pleadings, including an amendment to incorporate two immovable properties. Mr. Gunale submits that these two properties, as per the understanding of the petitioner, have been purchased by the respondent out of the compensation received from the National Highway Authority of India. He submits that with an object to recover the amount by way of partition, the petitioner sought to include those two properties in the suit.

4. He further submit that on 19th July 2024, the learned Civil Court partly allowed the application, thereby rejecting the prayer to incorporate those two properties in the suit. As against the refusal by the learned Civil Court to incorporate two properties in the suit, Mr. Gunale, learned counsel for the petitioner, has raised his submissions.

5. The suit is for partition. The petitioner claims to be the real sister of the respondent and also claims to have a ½ share in the ancestral property. As per the petitioner, the entire property has been acquired by the National High Authority of India and the compensation has also been awarded to the respondent. If the suit is decreed, the petitioner would be entitled for the share as is permissible

in law. The remedy for the petitioner to execute the decree is provided under law.

6. At present, whether those two properties are purchased by the respondent only out of the compensation that has been awarded by the National Highway Authority of India is not clear before this Court and also was not clear before the learned Trial Court. The learned Trial Court while deciding the application has observed in paragraph No.9 and 10, which read as follows :

“9. In the matter on hand, the suit is filed for partition. The plaintiff has specifically claimed her ½ share in the suit properties. She has contended that the same lands were acquired by the State for the construction of highway and she has ½ share. The lands which are acquired are two plots adm.41R. The total compensation received for the acquired land is Rs.80,56,580/-. So that particular 41R land is now not in existence and the plaintiff or defendants are not its owners. Whether the plaintiff has right in the acquired land or not is not a question now but it is presumed that she has right in the acquired land. So at the most she can claim her share in the compensation amount. She cannot claim her share in the lands which are purchased subsequently, may be out of the compensation amount or may be out of

own income of defendant Nos.2 and 3.

10. *The plaintiff, may be under presumption that if the newly purchased properties are not added in the suit it would become in fructuous. So is not the case because already the acquired land has gone from the possession of the parties and they have got the compensation. So the plaintiff can claim her share in the compensation and not in the newly purchased lands. So, therefore the amendment mentioned in application para Nos.5 and 3 cannot be allowed. Rest of the amendment in the application will not make difference on the merits of the case as they are related with the suit valuation and stamp duty. Therefore, I answer point Nos.1 and 2 partially in the affirmative and in answer to point No.3 I pass the following order -*

ORDER

1. *The application is partially allowed subject to observations made in the last para of the order.*
 2. *Cost in the main cause.”*
7. I have cautiously gone through those findings. I find that the learned Trial Court has rightly exercised its discretion and jurisdiction while deciding the said application. I find no illegality or perversity committed by the learned Trial Court while rejecting that part of the application of the petitioner whereby the prayer to

incorporate those two properties in the suit are declined.

8. No case is made out for interference under Article 227 of the Constitution of India. The writ petition stands disposed of. Needless to mention, if the petitioner succeeds in the suit, the petitioner, during execution may bring on record the fact that the properties were purchased by the defendants through the compensation amount and may take appropriate recourse accordingly.

(AJIT B. KADETHANKAR, J.)