



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

911 WRIT PETITION NO. 3122 OF 2024

Vijay Narayandas Rizwani
Age: 57 years, Occu: Business,
R/o: 37, Bhagyanagar, Nanded

....Petitioner
(Original Plaintiff)

VERSUS

1. Bhaskarrao Bapurao Patil (Khatgaonkar)
Age: 77 years, Occu: Agriculture,
R/o: Khatgaon, Taluka Biloli, District Nanded
At present R/o: Rajendra Nagar, Near Shyamnagar, Nanded
2. Sardar Sardulsingh Hirasing Fouji
Age: 67 years, Occu: Business,
R/o: Badpura, Gurudwara Area, Nanded
3. Harbhajankaur Sardulsingh Fouji
Age: 63 years, Occu: Household,
R/o: Badpura, Gurudwara Area, Nanded
4. Sardar Vijaysingh Sardulsingh Fouji
Age: 40 years, Occu: Nil,
R/o: Badpura, Gurudwara Area, Nanded

....Respondents
(Original Defendants
No.1 and 2 as well as
third party, now
added as defendant
No.3 and 4)

Mr. S. S. Bora, Advocate for the Petitioner
Mr. S. B. Bhapkar, Advocate for Respondent No.1
Mr. R. B. Narwade, Advocate for Respondent No.2
Mr. P. V. Ambade, Advocate for Respondent Nos.3 and 4

CORAM : AJIT B. KADETHANKAR, J.

DATE : 01.09.2026

ORAL JUDGMENT :-

. Rule. Rule made returnable forthwith. By consent of the parties, the matter is taken up for final disposal.

2. Subject-matter :

Feeling aggrieved by the order dated 01.08.2022 passed by the learned Joint Civil Judge Junior Division, Nanded in Regular Civil Suit No.212 of 2021, the Petitioner has filed the writ petition. An application under Order I Rule 10 of the Code of Civil Procedure for impleading Respondent Nos.3 and 4 as defendants in the suit came to be allowed. Feeling aggrieved thereby, the Petitioner has preferred the present petition. There is a chequered history of civil litigation amongst the parties to the present petition. Few facts are not disputed by any of the parties.

Thus core issues is that 'whether the Respondent Nos.3 and 4 are necessary and proper parties to the suit filed by the Petitioner against the Respondent Nos.1 and 2, and whether they are competent to participate the suit'.

3. Facts in brief :

- a. The subject matter suit property is an agricultural land admeasuring 40 R situated at Gat No.50 of village Kautha, District Nanded. Vide a registered sale deed dated 05.12.1981 bearing Serial No.5325 of 1981, the Petitioner purchased the suit property from its erstwhile owner i.e. Respondent No.2 namely Sardar Sardulsingh Fouji. Suffice to note, a Mutation Entry No.199 also came to be recorded pursuant to the said sale deed.
- b. The Petitioner was constrained to file the present suit for simpliciter injunction on account of obstruction caused to his peaceful possession over the suit property at the behest of Respondent Nos.1 and 2. It is pleaded in the plaint that, Respondent No.1 is not concerned with the suit property.
- c. During the pendency of the suit, Respondent Nos.3 and 4 who happen to be the wife and son of Respondent No.2 respectively, filed an application below Exhibit-54 under Order I Rule 10 of the Code of Civil Procedure with a prayer to implead themselves as party defendants. The said application was opposed by the Petitioner.
- d. Observing that no prejudice would cause to any party if the application was allowed; and that for adjudicating the merits of the suit the presence of Respondent Nos.3 and 4 would be necessary, the Trial Court allowed the

application vide the impugned order dated 01.08.2022. It is against this order that the Petitioner is before this Court.

4. Petitioner's submissions:

- a. Mr. Satyajeet Bora, learned Advocate for the Petitioner would submit that Petitioner's suit is for simpliciter injunction against Respondent Nos.1 and 2. Respondent Nos.3 and 4 claim their alleged rights through Respondent No.2. In such even otherwise the Respondent nos. 3 and 4 has no role to agitate.
- b. He would submit that previously, Respondent Nos.3 and 4 had instituted Regular Civil Suit No.331 of 2007 against the Petitioner, his brother and Respondent No.2 for simpliciter injunction in respect of two properties, including the present suit property admeasuring 40 R.
- c. Pertinently, the Respondent Nos.3 and 4 relied upon the decree passed by Civil Court in Regular Civil Suit No.106 of 1985. The suit was sought to be succeeded in the light of the decree passed in the Regular Civil Suit No.106 of 1985. That, after hearing all the parties, the learned 4th Civil Judge Junior Division, Nanded by a reasoned judgment and order dated 29.04.2017, dismissed the suit with costs.

d. The said judgment and decree were taken in challenge before all the appellate forums, and lastly before the Hon'ble Supreme Court. At all levels all the challenges came to be negated. As such, the judgment and decree dated 29.04.2017 passed in Regular Civil Suit No.331 of 2007 is intact.

e. Mr. Bora further submits that irrespective of the reference to other civil proceedings, the findings recorded by the learned 4th Civil Judge Junior Division, Nanded in Regular Civil Suit No.331 of 2007 are binding on Respondent Nos.3 and 4 as also in the present suit also.

f. It is lastly submitted that once having been defeated at every stage to establish their civil rights on any count, now Respondent Nos.3 and 4 cannot contend that they are necessary and proper parties to the present civil suit within the meaning of Order I Rule 10 of the Code of Civil Procedure. On these submissions Mr. Bora, learned Advocate for the Petitioner prays to allow the writ petition.

5. Submissions on behalf of Respondent Nos.3 and 4

a. Mr. P. V. Ambade, learned Advocate for Respondent Nos.3 and 4 would vehemently oppose the petition. He would rely upon the settlement arrived at between Respondent No.3 and Respondent No.2 in Regular Civil Suit No.106 of 1985.

b. He would point out the final order passed pursuant to the compromise between the parties to the said suit namely the present Respondent Nos.2 and 3. The final order reads thus :

“Read W.S. Ex.8. It is consent W.S. of defendant. In view of Ex. 8 this suit of the plaintiff is hereby decreed against the defendant. The defendant is perpetually restrained from causing obstruction and alienating suit land S. No. 12/2B of Kautha to the extent of 8 acres 30 gunthas land. Parties to bear their own costs. Decree be drawn accordingly.”

c. It is further submitted that since Respondent No.2 has unequivocally undertaken not to part with any portion of the land situated at Survey No.12, Batta No.2B of village Kautha, Respondent Nos.3 and 4 are absolutely justified in claiming themselves to be necessary and proper parties to the present suit.

d. He would further rely upon a judgment and order passed by this Court in the case of **Ashok S/o Babarao Patil vs. The State of Maharashtra and Others** in Writ Petition No.10493 of 2022 on 11.10.2022. With these submissions, he concludes his arguments.

e. It is further submitted that, the subject-matter property was given to the Respondent No.3 as a maintenance, and hence the Respondent No.3 must have a voice in the suit filed by the Petitioner. With this, learned Advocate for the Respondent Nos. 3 and 4 advocate the impugned order.

f. Mr. Narwade, learned Advocate representing Respondent No.2 as also Mr. Bhapkar, learned Advocate representing Respondent No.1 would echo the arguments advanced by the learned Advocate for Respondent Nos.3 and 4.

6. Consideration:

a. I have heard all the learned Advocates for the respective parties extensively. As recorded in the opening part of the judgment, the issues is about necessity and propriety of locus of the Respondent nos. 3 and 4 in Petitioner's suit as party defendants.

b. The title of the Petitioner flows from a registered sale deed which is executed in the year 1981. Vide the said sale deed, the Petitioner acquired title as well as possession over the suit property. On the basis thereof, the present suit has been filed for simpliciter injunction against Respondent Nos.1 and 2.

c. As mentioned supra, the cause of action pleaded in the suit is the disturbance allegedly caused by Respondent Nos.1 and 2 to the peaceful possession of the Petitioner over the suit property. Respondent Nos.3 and 4 now seek to introduce themselves in the suit obviously on the basis of the compromise decree passed in Regular Civil Suit No.106 of 1985.

d. It is not in dispute that Regular Civil Suit No.331 of 2007 was instituted by Respondent Nos.3 and 4 against the Petitioner as also Respondent No.2

from whom Respondent Nos.3 and 4 claim their alleged interest in the suit property. It is pertinent to note, the said suit was for a simpliciter injunction suit.

e. Although the said suit was only for injunction and no declaratory relief was sought therein, the Plaintiff therein had made reference to the decree passed in Regular Civil Suit No.106 of 1985. In as much, the Respondent Nos. 3 and 4 disputed title of the Petitioner, the competency of the Respondent No.2 to execute sale deed in favor of the Petitioner, and also sought to contend the title over the suit property under the garb of the compromise decree in the Regular Civil Suit No.106 of 1985. However in the suit of 2007, no declaratory relief was claimed for which the said suit itself was defective.

f. It is pertinent to note that the Petitioner has derived title to the suit property under a sale deed executed on 05.12.1981. As such, Respondent No.2 had already parted with the ownership and possession of the suit property in favour of the Petitioner in the year 1981 itself.

g. However, in the settlement occurred in Regular Civil Suit No.106 of 1985, Respondent No.2 had undertaken not to create third-party interest in the suit property, which Respondent Nos.3 and 4 contend to be a part of the present suit property. Since the Petitioner is holding title to the suit property since the year 1981, the subsequent compromise decree between Respondent

Nos.2 and 3 is therefore obviously not binding on the present Petitioner.

h. The Trial Court while deciding Regular Civil Suit No.331 of 2007 has rendered its finding at paragraph No.11 which reads thus :

“11 Another interesting fact is that the suit land is given to plaintiff no.1 in lieu of maintenance by defendant no.03. The paragraph no.09 of the plaint manifest that the plaintiffs' have no source of income except the suit land. If that is so, the suit land should have been either used for agricultural purpose or else it should have been let for collection of rent. However, none is the actual position hence it has become difficult to understand how the plaintiffs' are maintaining themselves. Be that as it may, but this evidence is against the plaintiffs' and it itself falsifies their contention. It is further argued that no one can act against the spirit of the decree in RCS no. 106/85. However, plaintiff no. 01 had instituted that suit only against defendant no. 03 and it was merely a simpliciter suit for injunction. That decree can not be branded as the decree in rem and it is a decree in personam only. It is not the case of plaintiffs' that the defendants' no.1 & 2 are claiming through defendant no.03. Even otherwise, the plaintiffs' have not proved it so. Thus, I am of the opinion that decree in RCS No. 106/85 is not binding up on the non parties to that suit.”

i. Apparently, the settlement decree in the suit of 1985 is to defeat the right of the Petitioner which is already lawfully created in the year 1981. So it is abundantly clear that such collusive decree, no right is created in favour of Respondent No.3 or Respondent No.4 in respect of the suit property which is already transferred by the Respondent No.2 in favor of the Petitioner.

j. At no point of time, even though Respondent Nos.3 and 4 had an opportunity to dispute the title of the Petitioner and seek appropriate declaratory relief, including cancellation of the sale deed executed by Respondent No.2 in favour of the Petitioner, no such relief was ever sought.

k. Obviously, considering the pleadings raised by Respondent Nos.3 and 4 in Regular Civil Suit No.331 of 2007, as also the application seeking their impleadment in the present suit, their claim stands frustrated on account of their failure in Regular Civil Suit No.331 of 2007. Even the Respondent Nos.3 and 4 have now lost the remedy to challenge Petitioner's sale deed and seek declaration as to the title.

l. In my opinion, allowing the Respondent Nos. 3 and 4 to participate the present suit would amount to abuse of process. No purpose would be served by impleading Respondent Nos.3 and 4 in the present suit as independent parties. Once the civil rights claimed by Respondent Nos.3 and 4 have already been adjudicated and attained finality, the Trial Court erred in venturing to consider the said application and rendering a finding that they are necessary and proper parties to the suit.

m. So far as the reliance placed by the learned Advocate for Respondent Nos.3 and 4 on the case of **Ashok Patil** (supra) is concerned, I find the same is misplaced. With due respect I record that the facts in both cases are

substantially different. At the cost of repetition, it is recorded that Respondent Nos.3 and 4 have already lost their claim in respect of the suit property by virtue of the judgment and decree passed in Regular Civil Suit No.331 of 2007.

n. Apparently, the application below Exhibit-54 is a collusive and nothing but an abuse of the process.

o. I am constrained to observe that the findings rendered by the Trial Court while allowing the application are not at all justifiable nor they are reasoned enough to allow the application. It appears that the Trial Court has not at all paid any consideration to the aspect of the matters as recorded above. Prejudice to the other party due to impleadment of another can not be a parameter to decide necessity and propriety of addition of a party. Besides testing such application on the touchstone of necessity and propriety, the Trial Court was bound to consider the application in the light of the result in the suit of 2007.

p. In view of the above, I find that the Petitioner has succeeded in making out a case for interference by this Court in exercise of its jurisdiction under Article 227 of the Constitution of India. The petition must succeed.

7. Hence I pass the following order :

ORDER

- I. The Writ Petition stands allowed.
- II. The impugned order dated 01.08.2022 passed by the learned Joint Civil Judge Junior Division, Nanded below Exhibit-54 in Regular Civil Suit No.212 of 2022 is quashed and set aside.
- IV. Consequently, the application below Exhibit-54 stands rejected.
- III. Rule made absolute in above terms.

[AJIT B. KADETHANKAR, J.]