

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2046 OF 2014**

Shri Shamrao Kedari Pawar)
Since deceased through heirs)
and legal representatives)

1(a) Smt Parvati Pawar)
Age adult, Occ Agriculture &)
Housewife)
R/a Borgaon, tal Kavathemahakal,)
District Sangli)

1(b) Sou. Chandrabhaga Hanman Mane)
Age Adult, Occ Agriculture &)
R/a Bamnal, Tal Athani,)
District Belgaon)

1(c) Sou Vimal Mahadev Patil)
Age Adult, Occ Agriculture &)
Housewife)
R/a C.M.E. Colony)
New Sanghavi, Pune)

1(d) Ramchandra Shamrao Pawar)
Age Adult, Occ Agriculture)
R/a Borgaon Tal Kavathemahakal)
Dist Sangli)

1(e) Sou Kamal Laxman Patil)
Age Adult, Occ Agriculture &)
Housewife)
R/a Laxminagar Budhgaon,)
Tal Miraj, Dist Sangli)

1(f) Sou Nishigandha Bajrang Patil)
Age Adult, occ Agriculture &)
R/a Bisur, Tal Miraj,)
Dist Sangli)

..Petitioners

Vs.

1 Shankar Bhujinga Pawar)
since deceased through heirs and)
legal representatives)

(a) Jagannath Shankar Pawar)
Age Adult, Occ Agri)

(b) Maruti Shankar Pawar)
Age Adult Occ Agri)

(c) Smt. Parvati Shankar Pawar)
Age Adult, Occ Household)

Resp Nos. 1(a) to 1(c) R/a Borgaon)
Tal Kavathemahakal, District Sangli)

(d) Sau Janabai Yashwant Salunke)
Age Adult, occu Household)
R/a Wadgaon Tal Tasgaon)
Dist Sangli)

(e) Sau Banabai Subhash Pawar)
Age Adult Occ Household)
R/a Shipur, Tal Miraj,)
Dist Sangli)

2 Shri Jagannath Shankar Pawar)
Age Adult, Occu Agriculture)
R/a Borgaon, Tal Kavathemahakal)
District Sangli)

3 Shri Maruti Shankar Pawar)
Age Adult Occ Agriculture)
R/a Borgaon Tal Kavathemahakal)
District Sangli)

..Respondents

Ms Manjiri S. Parasnis for the Petitioners
Mr. S. D. Patil for the Respondent Nos.1 & 2

CORAM : R. M. SAVANT, J.
DATE : 24th AUGUST, 2015

ORAL JUDGMENT

1 Rule. With the consent of the Learned Counsel for the parties made returnable forthwith and heard.

2 The Writ Jurisdiction of this Court is invoked against the order date 9-1-2014 passed by the Learned Adhoc District Judge-1, Sangli, by which order, the application Exhibit 29 filed by the Appellants i.e. the Respondent Nos.1 and 2 herein for framing an additional issue, came to be allowed and the additional issue to the following effect came to be framed:

“Whether Suit is hit by non joinder of land owners of Gat nos.1081, 1082, 1083 and 1085 of village Borgaon, Taluka Kavathe Mahankal.”

3 The said order has been challenged on the ground that the application Exhibit 29 has been allowed without the Petitioners being heard as the Petitioners original Respondents to the Appeal were not represented on the said day before the Lower Appellate Court. The said fact is controverted by the Learned Counsel Mr. Patil appearing on behalf of the Respondent Nos.1 and 2. It is required to be noted that the Petitioners herein have a decree in their

favour as regards the easementary rights to pass through the streamlet passing through the land of the Respondent Nos.1 and 2 herein. The said decree has been challenged by way of an Appeal by the Respondent Nos.1 and 2 being Regular Civil Appeal No.53 of 2013. It is in the said Appeal that the Respondents filed an application for framing of an additional issue which has its basis according to the Learned Counsel appearing for the Respondent Nos.1 and 2 in the Written Statement filed by the said Respondents in the Suit. As indicated above, the Suit in question has been decreed in favour of the Petitioners and it is in the Appeal that the issue has been framed.

4 Though the Learned Counsel for the Respondent Nos.1 and 2 questions the ground urged in the above Petition namely that the said order has been passed without hearing the Petitioners, in my view having regard to the implications that the impugned order has for the Petitioners and also considering the fact that the said application Exhibit 29 has been allowed in the absence of the Petitioners, it would be just and proper to set aside the impugned order dated 9-1-2014 and remand the matter back to the Lower Appellate Court for a denovo consideration of the application Exhibit 29. The parties to appear before the Lower Appellate Court on 3-9-2015, reply to the said application Exhibit 29 to be filed by the Petitioners by 15-9-2015 and the said application Exhibit 29 to be decided by the Lower Appellate Court latest by 30-9-2015.

5 Since it is at the instance of the Petitioners that the impugned order has been set aside, the Petitioners to pay costs of Rs.3000/- to the Respondent Nos.1 and 2 to be handed over to the Learned Counsel appearing for the said Respondents in the Lower Appellate Court on or before 3-9-2015. Needless to state that the application Exhibit 29 would be tried on its own merits and in accordance with law, uninfluenced by the impugned order or the instant order.

6 The Petition is accordingly allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs of the Petition.

[R.M.SAVANT, J]