

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5268 OF 2013

Narendra Shivappa Dahihande	]	
Age 61, Occupation – Business	]	
R/o. Hotagi Road, Near Kinara Hotel	]	 Petitioner
Dist. Solapur	]	(Orig. Plaintiff)

versus

- | | | | |
|----|---------------------------------|---|--|
| 1] | Kisan Paroji Dhajal |] | |
| | Age – Adult, Occu – Nil |] | |
| | |] | |
| 2] | Shivaji Paroji Dhajal |] | |
| | Age – Adult, Occu – Nil |] | |
| | Respondent No.1 and 2 R/o |] | |
| | 22, South Sadar Bazar, Solapur |] | |
| | |] | |
| 3] | Sitabai Paroji Dhajal |] | |
| | Since deceased |] | |
| | |] | |
| 4] | Ashok Ramchandra Pawar |] | |
| | Age – 71 years, Occu – Business |] | |
| | R/o. - Flat No.15, Rahul neha |] | |
| | Apartment, Civil Lines, |] | |
| | Opp. Vikas Nagar, Solapur |] | |
| | |] | |
| 5] | Mohan Masu Bhosale |] | |
| | Age 71 years, Occu – Nil |] | |
| | |] | |
| 6] | Sou. Rajani Mohan Bhosale |] | |
| | Age 61 years, Occu – Household |] | |
| | Respondent Nos.5 and 6 |] | |
| | R/o. Block No. 6 Yashavant |] | |
| | Nagar, Behind Yalgulvar School |] | |
| | Solapur |] | |
| | |] | |
| 7] | Samarth Sahkari Bank, |] | |
| | Navi Peth, Antrolkar Complex |] | |
| | Solapur |] | |
| | Summons be served on Manager |] | |

8] Satish Shivappa Dahihande]
Age – 62 years, Occ – Nil]
R/o – Shri Mangal Project, Phase-2]..... Respondents
156/4 Mangalwar Peth, Pune -11] (Orig. Defendants)

Mr. R S Alange for the Petitioner.
Mr. Prasad B Kulkarni for the Respondent No.1 & 2.
None for the Respondent No.8 though served.

CORAM : R. M. SAVANT, J.
DATE : 13th October 2015

ORAL JUDGMENT

1 At the outset the learned counsel appearing for the Petitioner Shri R S Alange seeks leave to amend so as to annex the amended copy of the plaint to the above Petition. Leave granted. Amendment to be carried out forthwith.

2 Rule, with the consent of the learned counsel for the Petitioner and the learned counsel for the Respondent No.1 and 2 made returnable forthwith and heard.

3 In the above Petition notice for final disposal came to be issued on 23/07/2013, however, in spite of the same, no appearance is put up on behalf of the Respondent No.8 who is the main contesting Respondent.

4 The above Petition takes exception to the order dated 08/02/2013 passed by the learned 3rd Joint Civil Judge Senior Division, Solapur by which order the Application (Exhibit 275) filed by the Respondent No.8 for being

impleaded as party Defendant to the suit came to be allowed and the Plaintiff was directed to implead the Respondent No.8 as a party Defendant to the suit.

5 The suit in question being Special Civil Suit No.629 of 1997 now renumbered as Regular Civil Suit No.541 of 2012 has been filed for recovery of an amount of Rs.1,45,030/- from the Defendant Nos.1 to 3. The second relief sought is a declaration that by efflux of time the mortgage dated 24/06/1967 is foreclosed and that the Plaintiff has become the absolute owner of the mortgaged property. The Petitioner has also sought the relief of recovery of the amount with interest at 25% p.a. as also the relief that the sale deeds executed by the Defendant No.1 in favour of the Defendant Nos.4, 5 and 6 in February 1999, April 1999 and August 1999 are not binding on the Plaintiff.

6 The said claim of Rs.1,45,030/- is founded on the fact that the partition took place amongst the heirs of one Shivappa Dahihande amongst whom is the Plaintiff i.e. the Petitioner herein and the Applicant Satish Dahihande who is his brother. It is averred in the plaint that the brothers of the Plaintiff have on the partition taking place no right, title and interest in the suit property. It is further the case of the Plaintiff that the agreement for joint cultivation with the Defendant Nos.1 to 3 was entered into in the year 1965 and that the Plaintiff spent an amount of Rs.31,000/- for the said joint cultivation and therefore the second agreement was entered into between the

Plaintiff and the Defendant No.3 whereby the said amount was agreed to be a charge on the suit property, pursuant to which the mortgage was executed by the Defendants in favour of the Plaintiff. It is in the said suit that the Respondent No.8 herein who, as indicated above, is the brother of the Plaintiff, filed an application for his impleadment. The Application is founded on the fact that there is no partition amongst the brothers i.e. the heirs of the said Shivappa Dahihande and that the Respondent No.8 has therefore interest in the suit property and therefore he be allowed to be impleaded.

7 The Trial Court has considered the said application and has allowed it principally on the ground that the Respondent No.8 herein i.e. Satish Dahihande denies the factum of partition and therefore it is necessary to implead him as a party Defendant to the suit. As indicated above it is the said order dated 08/02/2013 which is taken exception to by way of the above Petition.

8 The learned counsel for the Petitioner Shri Alange drew this Court's attention to the averments made in the plaint as also the reliefs sought in the plaint. It was his submission that considering the reliefs sought in the suit, the Respondent No.8 can neither be said to be a proper or necessary party to the suit, as what the Plaintiff essentially seeking is the recovery of the amount of Rs.1,45,030/- and a declaration that the mortgage stands

foreclosed. The Trial Court as indicated above has allowed the said Application on the ground that the Respondent No.8 i.e. the impleaded Defendant denies the factum of partition, and therefore, his presence is necessary in the suit.

9 In my view, the Trial Court has erred in allowing the said Application (Exhibit 275) having regard to the relief sought in the suit which as indicated above is for recovery of the amount, and for foreclosure of the mortgage with which the Respondent No.8 cannot be said to have any causal connection. It is well settled that a person can be joined as a party to the suit only if he or she is a necessary or a proper party. In the facts of the present case, where the suit is filed against the third parties for recovery of the amount as well as for foreclosure of the mortgage which was executed in the year 1967, the Respondent No.8 can neither be said to be a necessary nor a proper party to the suit. It would always be open for the Respondent No.8 to file independent proceedings to assert the right if any which he claims.

10 In that view of the matter, the impugned order dated 08/02/2013 is required to be quashed and set aside and is accordingly quashed and set aside. The above Writ Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs of the Petition.

[R.M.SAVANT, J]