

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6430 OF 2013**

Kunal Hemant Shah

..Petitioner

Vs.

Ganpat Yashwant Waghchaure & Ors.

..Respondents

Mr. Sachin Gite i/b Mr. M.S. Karnik for the Petitioner

Mr. A. B. Tajane for the Respondent Nos.1 to 4

CORAM : R. M. SAVANT, J.

DATE : 10th MARCH, 2015

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 10-1-2013 passed by the Learned 2nd Joint Civil Judge, Senior Division, Nashik, by which order, the application Exhibit 56 filed by the Applicants i.e. Respondent Nos.2 to 4 came to be allowed and the Applicants were directed to be impleaded as party Defendants to the Suit.

2 The Suit in question being Special Civil Suit No.325 of 2010 has been filed for specific performance by the Petitioner herein against the Respondent No.1 who is the husband of the Respondent No.4 and the father of the Respondent Nos.2 and 3 i.e. the Applicants. It is the case of the Applicants that they are having an interest in the property covered by the agreement of which specific performance is sought. It is required to be noted that in the plaint in paragraph No.9 it has been averred by the Plaintiff that the Applicants/Respondent Nos.2 to 4 have filed affidavits supporting the

application for permission to sell made to the Additional Collector, pursuant to which the said application was processed and the amount of nazarana to be paid was calculated. It seems that the process before the Additional Collector was complete, however the nazarana was not paid. Hence the averments in paragraph 9 of the plaint inter alia discloses that the Applicants had filed affidavits before the Additional Collector in support of the application for selling the land in question. The Trial Court as can be seen from the impugned order has allowed the said application on the ground that the Applicants have an interest in the property and the aspect as to whether the suit property is an ancestral property of the Applicants or not can be adjudicated at the hearing of the Suit.

3 In my view, having regard to the averments made in paragraph 9 of the plaint as also having regard to the fact that it seems to be case of the Applicants that the property in question is an ancestral property, the order passed by the Trial Court cannot be found fault with. The Applicants though not necessary parties, can be said to be proper parties whose presence would be required for a complete and effectual adjudication of the Suit. In that view of the matter, no case for interference is made out. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]