

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

**WRIT PETITION NO.7959 OF 2015**

**Jijabai Guman Avhad and ors. : Petitioners**  
**versus**  
**Gulab Banu Avhad and ors. : Respondents.**

**Mr. C G Gavnekar for the Petitioners.**

**CORAM : R. M. SAVANT, J.**  
**DATE : 31<sup>st</sup> August 2015**

**P.C.**

1           The writ jurisdiction of this Court is invoked against the order dated 18/04/2015 passed by the learned Joint Civil Judge, Junior Division, Sinnar, Dist. Nashik by which order the Application (Exhibit 75) to frame an additional issue as regards the fact that there is no cause of action for the Plaintiffs to file the suit in question came to be rejected.

2           The suit in question has been filed for partition and declaration of the share of the Plaintiffs who are the heirs of one Banu Avhad. The Defendants are the heirs of one Guman Avhad. The said Banu and Guman were the brothers and it is the case of the Plaintiffs that the property was purchased in the joint names of the said Banu and Guman and therefore they have a right in the suit property. It is on denial of the said right that the Plaintiffs have filed the suit in question. It appears that the issues in the suit were framed on 30/10/2012 and the suit had proceeded and was at the fag

end of the trial when the Application for impleadment of one Kusum Ankush Katkade who is from the branch of Guman as a party Defendant to the suit. Was filed. The said application for impleadment was opposed to on behalf of the Defendants by contending that the said application was filed at the fag end of the trial.

3           The Trial Court considered the said application and allowed the same by its order dated 17/01/2015. The Trial Court observed that though there is a delay in filing the application for impleadment of Kusum as party Defendant to the suit, however, since the said Kusum can be said to have share in the property, it is necessary to implead her meaning thereby her presence was necessary for a complete and effectual adjudication of the dispute. The Trial Court has allowed the said Application on imposing costs of Rs.1000/- on the Plaintiffs. It is after the said application came to be allowed on 17/1/2015 by the Trial Court, that the Defendants filed the instant Application (Exhibit 75) on 18/4/2015 for framing of the issue revolving around the cause of action for the Plaintiffs to file the suit. The reply of the Plaintiffs was endorsed on the said Application (Exhibit 75) wherein the said application was questioned on the ground that the Defendants have made only the general statements in the written statement and have not mentioned the reasons as to why there is no cause of action. The Plaintiffs also mentioned that in paragraph 4 the cause of action for filing the suit has been mentioned.

4           The Trial Court considered the said Application (Exhibit 75) and rejected the same by the order dated 18/4/2015. The rejection is inter alia on the ground that paragraph 4 sets out the cause of action and that the Defendants though have taken a plea that the suit is filed without cause of action have failed to substantiate thereafter as to how the suit as filed is without cause of action.

5           In my view, having regard to the reasons mentioned in the impugned order no case for interference in the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed. Needless to state that in the event the decree goes against the Defendants, the Defendants can raise the issue in the Appeal that would be required to be filed against the decree.

**[R.M.SAVANT, J]**