

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9249 OF 2012
WITH
CIVIL APPLICATION NO.2377 OF 2013**

Sindhubai Tukaram Wadkar & Ors.

..Petitioners

Vs.

Dnyanoba Piraji Wadkar & Ors.

..Respondents

Mr. P. K. Hushing for the Petitioners

Mr. Rahul S Kadam for the Respondent No.1

Mr. Ramdas Shelke for the Respondent Nos.2A and 2B

Mr. Sachin Khandagale for the Respondent No.3

CORAM : R. M. SAVANT, J.

DATE : 14th JANUARY, 2015

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 9-7-2012 passed by the Learned Civil Judge Junior Division, Saswad, by which order, the application Exhibit 62 filed by the Petitioners/Plaintiffs invoking Order I Rule 10 of the Civil Procedure Code to join about 45 persons as parties to the Suit was rejected, is taken exception to by way of the above Petition.

2 The Suit in question being Regular Civil Suit No.83 of 2004 has been filed for partition of the suit properties. The Plaintiffs have claimed ½

share in the suit properties and more specifically 96.5 Ares in block No.124 and 77 Ares in block No.126. It appears that the Suit was originally filed by the Petitioner No.1 herein who during the pendency of the Suit sold of her share to the Petitioner Nos.2 and 3 who were thereafter arrayed as Plaintiff Nos.2 and 3 to the Suit. The said amendment application to join the Plaintiff Nos.2 and 23 was the first amendment application and thereafter the second application was moved to incorporate the averments relating to the said Plaintiff Nos.2 and 3. The instant application Exhibit 62 is therefore the third application for amendment of the Plaint. As indicated above, by the said amendment as many as 45 parties are sought to be joined as the Defendants. It appears that the Defendant No.1 filed his Written Statement on 3-11-2008 wherein an objection was taken to the non joinder of certain parties. However, it appears that pursuant to the said objection that the Plaintiff Nos.2 and 3 were arrayed as the Plaintiffs to the Suit in question. The instant application is therefore founded on the fact that it was the objection of the Defendant No.1 that certain parties whose names are appearing in the 7/12 extract of the suit properties have not been joined to the Suit. The application is also founded on the fact that in the event the decree for partition is passed then it would be difficult to execute the said decree.

3 In so far as the instant application Exhibit 62 is concerned, the same was replied to on behalf of the Defendant No.1, the necessity of joining

the said 45 persons as parties to the Suit is questioned. In fact in paragraph 4 it has been averred by the Defendant No.1 that the persons whom the Plaintiff proposed to join have never been the co-sharers in the lands in question. The Trial Court considered the said application and has by the impugned order dated 9-7-2012 has rejected the same. The rejection is inter alia on the ground that the said application has been filed belatedly and that merely because the names of the persons is appearing as co-sharers in the 7/12 extract they cannot be joined as parties to the Suit. The Trial Court has also observed that the Plaintiffs have not demonstrated as to how the decree is passed would be unexecutable without adding the said persons as Defendants. The Trial Court has also adverted to the fact that the Plaintiffs are claiming the share to the extent of 96.5 Ares in block No.124 and 77 Ares in block No.126, therefore there is no necessity to join the said 45 persons as parties to the Suit.

4 The Learned Counsel appearing on behalf of the Petitioner sought to reiterate the case of the Petitioners/Plaintiffs in the Trial court in support of the application Exhibit 62.

5 Per contra the Learned Counsel Mr. Kadam appearing on behalf of the Respondent No.1 and Mr. Khandagale the Learned Counsel appearing on behalf of the Respondent No.2 would contend that the order passed by the Trial Court rejecting the application Exhibit 62 need not be interfered with.

The Learned Counsel would draw this Courts attention to the fact that block No.124 admeasures 5 Hector 22.5 Ares whereas block No.126 admeasures 11 Hector 09 Ares, where as the Plaintiffs are claiming a minuscule share out of the said property 94.5 Ares and 77 Ares.

6 Having heard the Learned Counsel for the parties, in my view, there is no merit in the above Petition. Apart from the fact that the Suit is of the year 2004 as also considering the fact that the basis for impeladment of the said proposed 45 Defendants has not been set out except stating that it is the Defendant No.1 who has taken objection on the ground that parties have not been joined, there is no material on record as to how the said 45 persons are connected to the family of the Plaintiff No.1 or as to how they are connected with the suit property except that their names are appearing in the 7/12 extract.

7 In so far as Order I Rule 10 is concerned, the principles applicable thereto are well settled and unless a party is either necessary or proper part then he or she cannot be impleaded. As indicated above except the fact that the names of the said 45 persons are appearing in the 7/12 extract, there is no material placed by the Plaintiffs to connect the said 45 persons either to the family of the Plaintiff No.1 or to the suit property. Merely because their names are appearing in 7/12 extract, the said parties cannot be arrayed as the

Defendants. In my view, therefore, the order passed by the Trial Court rejecting the application Exhibit 62 does not suffer from any error of jurisdiction or any other illegality or infirmity for this Court to interfere in its Writ Jurisdiction. The Writ Petition is accordingly dismissed. It is however made clear that the observations made in the impugned order as well as the instant order are only for the purposes of considering the application for amendment Exhibit 62, the Suit would undoubtedly be tried on its own merits and in accordance with law.

8 In view of the dismissal of the above Writ Petition, the Civil Application No.2377 of 2013 does not survive and to accordingly stand disposed of as such.

[R.M.SAVANT, J]