

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

APPEAL AGAINST ORDER NO.9 OF 2015

(Shri Raju s/o Baburao Kale and others ..vs.. Shri Shriram s/o Narayan Tidke)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A. HAQ, J.

DATED : 28-01-2015

Heard Shri R.D. Bhuibhar, the learned Advocate
for the appellants.

2. This is an appeal under Order XLIII Rule 1(u) of the Civil Procedure Code filed by the original defendants challenging the judgment passed by the District Court concluding that Sau. Laxmibai Parihar is required to be impleaded as co-plaintiff and suit summons are required to be issued to the original defendant Nos.3 and 4 (present appellant Nos.3 and 4), and remanding the matter to the trial Court for deciding it afresh.

3. The grievance of the appellants is that Sau. Laxmibai Parihar was necessary party to the civil suit and accordingly an objection is raised in the written statement and an issue was framed by the trial Court to that effect. It is submitted that the original plaintiff had an opportunity to implead Sau. Laxmibai Parihar as party to the civil suit, however he had not taken any steps in

the matter and the District Court has committed an error in permitting the original plaintiff to rectify the error. It is submitted that the original defendant Nos.3 and 4 appeared before the District Court and supported the case of the original defendant Nos.1 and 2 (present appellant Nos.1 and 2) and overlooking these aspects, the District Court has directed that suit summons be issued to the original defendant Nos.3 and 4 to enable them to represent their case before the trial Court.

4. Shri R.D. Bhuibhar, the learned Advocate has submitted that the District Court has wrongly exercised the jurisdiction under Order XLI Rule 23 of the Civil Procedure Code. It is submitted that the remand orders should not be passed in a routine manner and it should be only if it is necessitated and the District Court is not in a position to decide the matter on the basis of the material placed by the parties on the record. In support of the submission, reliance is placed on the judgment given by the Hon'ble Supreme Court in the case of *Ashwinkumar K Patel .vs. Upendra J. Patel and others* reported in *AIR 1999 SC 1125*.

5. After hearing the learned Advocate for the appellants and examining the impugned judgment, I am of the view that the District Court has exercised its jurisdiction under Order I Rule 10 of the Civil Procedure Code, concluding that Sau. Laxmibai Parihar be joined as

co-plaintiff and issuing directions accordingly. The exercise of jurisdiction by the District Court under Order I Rule 10 of the Civil Procedure Code cannot be faulted with. In view of impleadment of Sau. Laxmibai Parihar as co-plaintiff, the matter is required to be remanded to the trial Court for fresh consideration and the judgment passed by the District Judge is proper and does not require any interference. The appeal is dismissed. No costs.

JUDGE

pma