

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

WRIT PETITION NO.4107 OF 2014

(Bharat Madadeosa Naik and others ..vs.. State of Maharashtra, through Collector, Amravati and others)

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

Court's or Judge's orders

Shri S.J. Kadu, Advocate for the petitioners,
Shri S.M. Bhagde, AGP for the respondent Nos.1 and 2,
Shri Mahesh Singh, Advocate for the respondent Nos.4 to 8,
Shri Rahul Dhande, Advocate for the respondent Nos. 9 to 12,
None for the respondent No.3.

CORAM : Z.A. HAQ, J.

DATED : 11-09-2015

Heard Shri S.J. Kadu, learned Advocate for the petitioners, Shri S.M. Bhagde, learned Assistant Government Pleader for the respondent Nos.1 and 2, Shri Mahesh Singh, learned Advocate for the respondent Nos.4 to 8 and Shri Rahul Dhande, learned Advocate for the respondent Nos.9 to 12.

2. The petitioners/plaintiffs have filed this petition challenging the order passed by the trial Court, allowing the application (Exhibit No.17) filed by the respondent Nos.4 to 8 and striking out their names from the array of the defendants. The learned trial Judge has allowed the application (Exhibit No.17) accepting the contentions of the defendant Nos. 4 to 8 that they are not having any right, title and interest in the suit property and no relief is sought against them and therefore, they should not have been impleaded as defendants in the civil suit.

3. From the pleadings, it is clear that the suit property was owned by Late Shri Ganpatsingh Suryawanshi-father of the defendant Nos.4 to 8. Late Shri Ganpatsingh Suryawanshi sold the suit property to the defendant Nos.9 to 12. The petitioners/plaintiffs have sought relief against the defendant Nos.9 to 12, who are presently the owners of the suit property. However, considering the nature of controversy, the petitioners/plaintiffs opted to implead the defendant Nos.4 to 8 as party to the civil suit. Considering that they are the legal heirs of Late Shri Ganpatsingh Suryawanshi and that Late Shri Ganpatsingh Suryawanshi was undisputedly the owner of the suit property, it cannot be said that the defendant Nos.4 to 8 will not be proper parties to the suit. The plaintiffs being *dominus litis*, it is their option to implead necessary/proper parties. In my view, the learned trial Judge has committed an error of jurisdiction while allowing the application (Exhibit No.17) and striking out the names of the defendant Nos.4 to 8 from the array of the defendants.

4. Hence, the following order :

- (i) The impugned order is set aside.
- (ii) The application (Exhibit 17) is dismissed.
- (iii) The petition is allowed in the above terms.

In the circumstances, the parties to bear their own costs.

JUDGE