

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

WRIT PETITION NO.5367 OF 2013

(Shri Vikas s/o Maruti Hatwar ..vs.. Shri Tejram s/o Mitaram Selokar (died) through his L.Rs) and
others)

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 : 08-06-2015

Heard Shri S.K. Kotwal, the learned Advocate for
the petitioner.

2. The petition has been dismissed against
respondent No.5-B as he could not be served. The
learned Advocate for the petitioner submits that the
respondent Nos.5-A and 5-B were brought on record in
the civil suit as legal representatives of the respondent
No.5-Smt. Umabai wd/o Rajaram Selokar. It is
submitted that the civil suit has proceeded *ex parte*
against the respondent No.5-A and 5-B. The respondent
No.6 is reported to be dead and the petitioner has filed
pursis dated 01-11-2014 stating that the legal
representatives of the respondent No.6 are on record as
the respondent No.1-A to 1-F, 2, 3, 4 and 5. None
appears for the respondents though the notice of disposal
are served on them.

3. The petitioner/plaintiff has filed this writ petition challenging the order passed by the trial Court, rejecting the application (Exhibit 26) filed by the petitioner/plaintiff, seeking permission to implead additional defendants. The petitioner/plaintiff has filed civil suit praying for seeking decree for declaration that the petitioner is the owner of the suit property by virtue of the registered sale-deed and for possession of the suit property. Fularibai came to be impleaded as defendant No.4 in the civil suit as the defendants in the civil suit claimed that the suit property was ancestral property in which Mitaram also had share and Fularibai was his widow. The respondent Nos.1 and 3-sons of Mitaram are also impleaded as defendants in the civil suit. The petitioner/plaintiff filed the application (Exhibit 26) seeking permission to implead the daughters of Mitaram as the defendants. This application was opposed by the defendants and the learned trial Judge, by the impugned order, rejected the application on the ground that the plaintiff has not sought any relief against the proposed defendants.

The petitioner/plaintiff being aggrieved by the order passed by the learned trial Judge, has filed this writ petition.

4. Considering the nature of controversy, in my view, the learned trial Judge should have issued notices of the application (Exhibit 26) and after hearing them,

the application should have been decided. The learned trial Judge has committed jurisdictional error by rejecting the application (Exhibit 26) without issuing notices to the proposed defendants and without hearing them. Therefore, the impugned order is set aside. The matter is remitted to the learned trial Judge. The application (Exhibit 26) should be decided after issuing notices to the proposed defendants whose details are given in the application (Exhibit 26).

5. The petition is allowed in the above terms. In the circumstances, the parties to bear their own costs.

JUDGE

pma