

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

WRIT PETITION NO.5704 OF 2013

(Shri Rajkumar s/o Gulab Lambat ..vs.. Shri Tejram s/o Mitaram Selokar (died) 1-A. Smt. Bebibai
 wd/o Tejram Selokar 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 : 27-07-2015

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

None appears for the respondent Nos.1-A to 1-F, 2, 3 and 5-A though served. The service report of the respondent No.5-B is awaited. The learned trial Judge has directed that the civil suit shall proceed ex-parte against the respondent No.5-B. In these facts and the fact that the judgment which I propose to deliver will not adversely affect the respondent No.5-B, the petition is taken up for hearing.

2. The petitioner/plaintiff has filed this writ petition challenging the order passed by the trial Court, rejecting the application (Exhibit 25) filed by the petitioner/plaintiff, seeking permission to implead additional defendants. The petitioner/plaintiff has filed civil suit praying for 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 original respondent No.1 and the respondent No.3 sons of Mitaram were also impleaded as defendants at the time of filing of the civil suit. The petitioner/plaintiff filed the application (Exhibit 25) 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.

3. Considering the nature of controversy, in my view, the learned trial Judge should have issued notices of the application (Exhibit 25) to the proposed defendants and after hearing them, the application should have been decided. The learned trial Judge has committed jurisdictional error by rejecting the application (Exhibit 25) 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 25) should be decided after issuing notices to the proposed defendants whose details are given in the application (Exhibit 25).

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

JUDGE

pma