

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

WRIT PETITION NO.2109/2014

Jaiwant S/o Diwakarrao Deshmukh,
Aged about 68 Yrs., R/o Jarud,
Tah. Warud, Distt. Amravati.

..Petitioner.

..Versus..

1. Ravindra Diwakarrao Deshmukh,
through L.Rs.
- 1(a) Sunil Ravindra Deshmukh,
Aged 57 Yrs., Occu. Agriculturist.
- 1(b) Sau. Alka Sudhakarrrao Mohod,
Aged 47 Yrs., Occu. Agriculturist.
- 1(c) Rahul Ravindra Deshmukh,
Aged 42 Yrs., Occu. Agriculturist.
- 1(a) to 1(c) all R/o Jarud,
Tah. Warud, Distt. Amravati.
2. Vinayak Diwakarrao Deshmukh,
through L.Rs.
- 2(a) Dr. Anil Vinayakrao Deshmukh,
Aged 47 Yrs., Occu. Doctor,
R/o C/o Mont Sir, Plot No.57,
Before Brijlal Biyani College,
Sharda Vihar, Amravati.
- 2(b) Smt. Sudha Wd/o Vinayak Deshmukh,
Aged 62 Yrs., Occu. Nil.
- 2(c) Ku. Nanda Vinayakrao Deshmukh,
Aged 44 Yrs., Occu. Nil.

2(d) Pradip Vinayakrao Deshmukh,
Aged 44 Yrs., Occu. Agriculturist.

2(e) Ku. Vandana Vinayakrao Deshmukh,
Aged 38 Yrs., Occu. Nil.

2(b) to 2(e) all R/o Tejaswini Colony,
Behind Navodaya Vidyalaya, Amravati,
Distt. Amravati.

3. Sau. Rekha Sureshrao Bijwe,
Aged 32 Yrs., Occu. Agriculturist,
R/o Jarud, Gandhi Chowk,
Tah. Warud, Distt. Amravati.

..Respondents.

Shri N.R. Saboo, Advocate for the petitioner.
Shri S.S. Shingane, Advocate for respondent no.3.

CORAM : Z.A. HAQ, J.
DATE : 2.2.2016

ORAL JUDGMENT

1. Heard Shri N.R. Saboo, advocate for the petitioner and Shri S.S. Shingane, advocate for respondent no.3. None appears for other respondents though served.

2. **Rule.** Rule made returnable forthwith.

3. The petitioner has challenged the order passed by the trial Court rejecting the application filed by him under Order 1 Rule 10 of the Code of Civil Procedure praying

that he may be permitted to get impleaded as co-plaintiff.

The predecessor of respondents 1(a) to 1(c) filed the civil suit praying for decree for declaration that the plaintiff had absolute right of *pre-emption* and interest over the suit property. The plaintiff prayed for decree for declaration that the original defendant no.1 had no right to sell the suit property unless the plaintiff refuses to purchase the said property. The plaintiff prayed for other reliefs also. In this civil suit the petitioner filed an application (Exh. No.107) under Order 1 Rule 10 of the Code of Civil Procedure contending that he is one of the heir of Shri Diwakarrao Deshmukh and, therefore, he is also having the right of *pre-emption* like the plaintiff and, therefore, he may be permitted to get himself impleaded as co-plaintiff in the civil suit. The defendants opposed the claim of the petitioner. The learned trial Judge has rejected the application (Exh. No.107). The petitioner being aggrieved by the order passed by the trial Court, has filed this writ petition.

The respondent nos.1(a) to 1(c) who are now the plaintiffs have filed reply solemnly affirmed on 14th December, 2015 and have stated that they are not having objection if the prayer of the petitioner to get himself impleaded as co-plaintiff is allowed.

Apart from the fact that the plaintiffs are not opposing the prayer of the petitioner for impleadment as co-plaintiff, the original defendants have not been able to point out that the petitioner will not be able to file separate suit seeking the relief as sought by the

plaintiff in the present suit. In view of this, I find that the learned trial Judge has failed to exercise the jurisdiction vested in him properly and, therefore, the impugned order is unsustainable.

4. Hence, the following order:

- (i) The impugned order is set aside.
- (ii) The application (Exh. No.107) filed by the petitioner is allowed.
- (iii) The petitioner is permitted to get himself impleaded as co-plaintiff in the civil suit.
- (iv) Rule is made absolute in the above terms.

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

C.A.W. NO.1570/2014.

In view of disposal of the writ petition, this application praying for time to file translation does not survive and is disposed of accordingly. No costs.

JUDGE

Tambaskar.