

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**WRIT PETITION NO. 2862 OF 2017**

Santoshlal Rupchand Gandhi .. Petitioner

Versus

Sachin Subhshlal Gandhi & Ors. .. Respondents

Mr.R.N. Chavan, Advocate for the petitioner.

Mr.V.A. Bagadia, Advocate for respondent Nos. 1 & 2.

Mr.L.B. Pallod, Advocate for respondent Nos. 5 to 7.

**CORAM : S.B. SHUKRE, J.**

**DATED : 08.03.2017**

**P.C. :-**

1. Heard learned Counsel for the petitioners. Perused the impugned order dated 17.10.2016 and the application vide Exh.86. Learned Counsel for the petitioner submits that interest of the petitioner in the suit property is same as that of the plaintiffs and therefore, the petitioner ought to have been allowed to join the cause of the suit along with the plaintiffs. However, upon going through the written statement of this petitioner, who is original defendant No.3, it becomes clear that commonness of cause of action is only to the extent of having share in the suit property along with other coparceners including the plaintiffs and nothing more. This petitioner has also contended that he is a tenant in the suit property of defendant No.5 and even if

partition takes place, his right as a tenant in the particular portion of the property would not be affected.

2. In the impugned order the learned Civil Judge has considered all these aspects of the matter and rightly concluded that only because there is commonness of interest along with plaintiffs in the suit, this petitioner cannot be allowed to join as co-plaintiff and his interest will be well taken care of in view of settled position of law that in a suit for partition shares of all co-sharers are required to be determined and every party in such suit is in the position of plaintiffs' and are entitled for share in the partition. I do not see any patent illegality and perversity in the impugned order.

3. The writ petition stands dismissed summarily with costs.

**[S.B. SHUKRE, J.]**