

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

WRIT PETITION NO. 3725 OF 2013

SAIRABAI KANHAIYALAL CHAJED AND OTHERS
VERSUS
ZUMBARLAL NARAYANDAS RAKA AND OTHERS

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Advocate for Petitioners : Shri Natu Sharad V.
Advocate for Respondents 1 to 4 : Shri Indani M.S. and Indani U.M.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 28th August, 2017

Per Court:

1 The Petitioners/ original Plaintiffs are aggrieved by the order dated 16.02.2013 by which application Exhibit-106 filed by Defendant Nos.1 to 4 has been allowed and two persons, namely, Sudam Sahebrao Aher and Kiran Sahebrao Aher have been directed to be added as Defendant Nos.5 and 6.

2 I have heard the strenuous submissions of the learned Advocates for the respective sides.

3 The Petitioners have filed RCS No.109/2007 for seeking injunction against the Defendants. The Defendants have filed the Counter Claim wherein, it is submitted that the Petitioners be directed to execute a sale deed in the light of the Defendants claiming specific performance.

4 This Court (Coram : S.V.Gangapurwala, J.) by order dated 30.04.2013 has granted ad-interim relief to the Petitioners, which reads as

under:-

- "1. *Heard.*
2. *The learned counsel submits that the suit and the counter claim is for simpliciter injunction and no prayer for specific performance has been made, still, application for addition of party is allowed.*
3. *Issue notice to the Respondents, returnable on 17.06.2013.*
4. *Till then, ad-interim stay to further proceedings in the suit."*

5 It appears from the Counter Claim filed by the Defendants that they have prayed for the dismissal of the suit and for allowing the Counter Claim. Further prayer is that the Plaintiffs be restrained from interfering with the possession of the Defendants. No prayer for specific performance of contract has been put forth though the Defendants have pleaded in paragraph 5 to that effect.

6 It is the contention of the Defendants that Plaintiff No.2 has sold a portion of the suit property to two different persons by executing the sale deeds. The said two persons deserve to be arrayed as Defendants. The proposed Defendants have appeared before the Trial Court and as is recorded in paragraph 3 of the impugned order, they have contended that they do not have any desire to resist the suit or the counter claim and hence, the application Exhibit-106 seeking their addition be rejected.

7 It is trite law that when a party is sought to be added to the proceedings, there ought to be a specific contention available on record by

which the reason for adding them could be assessed. The Court must conclude that there would not be a proper and effective adjudication of the proceedings until some of the parties or a specific party is added. In short, if the absence of the party would obstruct a proper adjudication of the proceedings, such party needs to be added.

8 In the instant case, neither in the Written Statement nor in the Counter Claim have the Defendants attributed any role played by the proposed Defendants for the reason that the alleged sale of portion of the suit land by Plaintiff No.2 had not occurred at that time. Even as on date, the proposed Defendants, if added, would not be able to oppose any particular prayer or contention either of the Plaintiffs or of the Defendants since there are no pleadings or prayers against them.

9 Considering the above fact situation and taking into account the specific contention of the proposed Defendants as is recorded by the Trial Court that they do not intend to resist the suit or the Counter Claim, that I do not find that the impugned order could be sustained.

10 In the light of the above, this Writ Petition is allowed. The impugned order dated 16.02.2013 is quashed and set aside and Exhibit 106 stands rejected.