

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.101 of 2014

01 Dattatraya s/o Balbhim Limkar,
age: 10 years, minor
u/g of petitioner no.3.

02 Sheetal d/o Balbhim Limkar,
age: 16 years, Minor,
U/g of petitioner no.3.

03 Sou.Vijayabbai w/o Balbhim
Limkar, age: 41 years,
Occ: Household & Agril.,
R/o Khasgaon, Tq. Paranda,
District Osmanabad.

Petitioners

Versus

01 Balbhim s/o Sukhdeo Limkar,
age: 40 years, Occ: Agril.,
R/o Khasgaon, Tq. Paranda,
District Osmanabad.

02 Ramesh s/o Sukhdeo Limkar,
age: 26 years, Occ: Agril.,
R/o Khasgaon, Tq. Paranda,
District Osmanabad.

03 Sou.Ranjanabai Sadhu Shinde,
age: 32 years, Occ: Agril.,
R/o Ghargaon, Tq. Paranda,
District Osmanabad.

04 Sou.Sakhubai w/o Subhash Hube,
age: 30 years, Occ: Agril.,
R/o Ghatnandur, Tq.Washi,
District Osmanabad.

05 Kamlabai Sukhdeo Limkar,
age: 50 years, Occ: Agril.,
R/o Khasgaon, Tq. Paranda,
District Osmanabad.

06 Reshma Vithal Nakate,
age: 22 years, Agri.,
R/o Magarwadi, Tq.Pandharpur,
District Solapur.

07 Avinash Rangnath Umap,
age: 32 years, Occ: Agri.,
R/o Ghargaon, Tq.Paranda,
District Osmanabad.

08 Sou.Sakharbai w/o Uttam Shivtade,
age: 43 years, Occ: Agri.,
R/o Khasgaon, Tq. Paranda,
District Osmanabad.

Respondents

Mr.A.S.More, advocate for petitioners
Mr.G.R.Syed, advocate with Mr.A.S.Sayed, advocate for
Respondents No.2 to 5.
Mr.A.R.Deokate, advocate for Respondents No.7 & 8.
Respondents No.1 & 6 served.

CORAM : S.B.SHUKRE, J.

DATE : 30th January, 2017

ORAL JUDGMENT :

1 Heard. Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties.

2 In the impugned order, the learned Civil Judge, Junior Division, Osmanabad, has found that there is no merit in the application seeking amendment of the plaint and petitioners were not party to Regular Civil Suit No.43 of 2007 and that if the amendment seeking a declaration that decree dated 29.01.2013, passed in R.C.S. No.43/2007 is not binding upon the petitioners, is allowed, it would substantially change nature of the suit.

3 Learned Counsel for Respondents No.2 to 5 supports the petitioners, however, learned Counsel for Respondents No.7 and 8 does not. No one appears for Respondents No.1 and 6.

4 It is the contention of learned Counsel for Respondents No.7 and 8 that in any case, decree passed in R.C.S. No.43/2007 would not bind petitioners as they were not party to that suit and if any declaration, as sought by the petitioners, is allowed to be claimed, those persons, who were party to R.C.S. No.43/2007 and not party to Regular Civil Suit No.74/2007, would have also to be joined as party.

5 I think that learned Counsel for Respondents No.7 and 8 is fair in his contention that petitioners not being party to R.C.S. No.43/2007, no decree passed in that suit would bind them. But, at the same time, in order to avoid multiplicity of litigation and finally adjudicate dispute between the parties, it is necessary that the petitioners i.e. original plaintiffs are also allowed to raise an issue regarding enforceability of the decree passed in R.C.S. No.43/2007 against them before appropriate forum and at an appropriate stage, of course, that would have to be done after hearing all the concerned parties. However, so far petitioners have not filed any application for adding necessary parties in R.C.S. No.74/2007. In their absence, therefore, the application, as filed by the petitioners, seeking amendment of the plaint, could not have been properly decided by the learned Civil Judge.

6 In this view of the matter, I see no illegality or

impropriety in passing of the impugned order. But, in the interest of justice, petitioners would have to be given liberty to file appropriate application before the learned trial Court seeking not only amendment of the plaint, but also joining of additional parties as necessary parties to the suit, which application, if filed, shall have to be decided by the trial Court after hearing all the concerned parties in accordance with law.

7 Writ Petition is, therefore, dismissed with liberty to the petitioners to file application afresh on the lines stated earlier and in that case, same shall be decided in accordance with law by the trial Court, as early as possible.

8 Rule discharged. No costs.

S.B.SHUKRE
JUDGE

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