

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

WRIT PETITION NO. 918 OF 2015

Suman Shantaram Devle
Died through her L.Rs.
Padmakar Shantaram Devle and others .. Petitioners

Versus

Vasant Bhalchandra Devle
Since deceased through L.Rs.
Pradip Vasant Devle and others .. Respondents

Shri Vijay B. Patil, Advocate for Petitioners.
Shri Girish V. Wani, Advocate for Respondent Nos. 1 to 4.
Smt. R. P. Gaur, A.G.P. for Respondent Nos. 5 to 7.

**CORAM : S. V. GANGAPURWALA, J.
DATE : 13TH DECEMBER, 2017.**

FINAL ORDER :

. Application filed by respondents/plaintiffs for adding parties is allowed. The said order is assailed in the present writ petition.

2. Mr. Patil, the learned advocate for petitioners submits that, initially in the year 2005 suit was filed for declaration of ownership and immediately thereafter plaintiff filed an application for amendment thereby adding alternate prayer for partition and separate possession. The defendants filed written

statement specifically raising the ground of non-joinder of necessary parties. The issues were framed by the Court. The issue No. 2-A framed is with regard to whether the suit is bad for non-joinder of necessary parties. Thereafter, plaintiffs closed their evidence. After the plaintiffs' evidence is closed, the plaintiffs in the year 2014 filed an application seeking addition of parties. The learned advocate submits that, once the trial has commenced and the due diligence not being shown the application could not have been entertained. The learned advocate relies on the judgment of the learned Single Judge of this Court in a case of Gangubai Baban Kadam and another Vs. Vidya Vijay Joshi reported in 2015(6) Bom. C. R. 138, so also another judgment of the learned Single Judge of this Court in a case of Kishor Raghunath Pande and another Vs. Narendra Durlabhji Shah reported in 2012(2) Bom. C. R. 629. The learned advocate further submits that, there is no whisper in the application of due diligence. No reasons are mentioned. The application ought to have been rejected.

3. Mr. Wani, the learned advocate for respondent Nos. 1A to 4 supports the order.

4. In the suit, the plaintiffs have also claimed an alternate relief of partition and separate possession. In a suit for partition and separate possession all the co-sharers are necessary parties. Order I Rule 10(2) of the Code of Civil Procedure permits the

Court to add parties either on an application of the party or *suo motu* at any stage of the suit.

5. No doubt, application Order I Rule 10(2) of the C. P. C. has to be read along with Order VI Rule 17 of the C. P. C. The person to be added as party is necessary party. The plaintiffs in the application have stated that, the genealogy of Bhalchandra Devle has been given. It was contended that, three daughters of Bhalchandra Devle have relinquished their rights and as such their heirs are not added as parties. However, defendant Kishor has objected to that and has contended that, they also have a right in the property. For effective adjudication of the suit for partition and separate possession adding parties would be necessary. The suit ought not to fail on technical ground. If the suit is to fail on technical ground, then the plaintiffs are at liberty to withdraw the suit and file a fresh suit on same cause of action. The same can be avoided by allowing addition of parties. The Trial Court has properly exercised the discretion.

6. As discretion has been exercised in a reasonable manner by the Trial Court, I am not inclined to exercise my jurisdiction under Article 227 of the Constitution of India. The writ petition as such is disposed of. No costs.

[S. V. GANGAPURWALA, J.]