

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3542 OF 2017**

Ramchandra Ganpati Pawar
(deceased) through legal heirs:
1A) Vanmala Ramchandra Pawar & Ors. Petitioners
Versus
Ishwarkrishna Ashok Waghmale & Ors. ...Respondents

Mr. Nandu V. Pawar, for the Petitioners.
Mr.D.D.Rananaware, for the Respondents

**CORAM : SMT. SADHANA S.JADHAV, J.
DATE : 9th November, 2017.**

P.C. :

1. Heard. Rule. Rule made returnable forthwith with consent of the parties.
2. The petitioner No.1 happens to be the original defendant No.1 in Regular Civil Suit No.14 of 2005 pending before the Civil Judge, J.D. Satara. The petitioner impugns the order dated 8.11.2016 passed by the 3rd Joint Civil Judge, J.D. Satara, thereby transposing defendant Nos. 2 and 3 as plaintiffs in the said suit. The plaintiff had prayed for possession of one guntha of agricultural land which was in possession of the defendant No.1

and mesne profits of Rs.1500/- per month. The defendant Nos. 2 and 3 had filed their written statement and had contended that they are entitled to one guntha land which is in possession of the defendant No.1. It is also contended that they are supporting the plaintiff as is contended in paras 1, 2 and 3. It was contended that half portion of survey No.23 is in possession of the plaintiff and rest of the half portion is in possession of defendant Nos. 2 and 3 and that it is amicably divided between them. Hence, the prayer of the defendants Nos. 2 and 3 was that the Court may direct the defendant No.1 to hand over vacant and peaceful possession of one guntha of land which was in his possession.

3. The learned Court had framed the issues as follows :-

- “1) Does the plaintiff prove that he is owner of the suit property ?
- 2) Whether the plaintiff is entitled for recovery of possession of the suit property ?
- 3) Whether the plaintiff is entitled for mesne profit as prayed ?
- 4) What order and decree ?”

4. It is pertinent to note that no issue was framed as to whether the defendant Nos. 2 and 3 were entitled to claim one guntha of land which is in possession of defendant No.1. The issues were framed only to the extent of the claim of the plaintiff.

5. The defendant Nos. 2 and 3 had then filed an application under Order I Rule 10 of C.P.C. praying that the defendant Nos. 2 and 3 be transposed as plaintiffs since they were claiming one guntha land from the possession of the defendant No.1. The learned Court has observed that the defendant Nos. 2 and 3 cannot be deprived of their right to file an application under Order I Rule 10 of C.P.C. even if it is filed at a belated stage. It was also considered that in order to avoid multiplicity of proceedings, it would be necessary to transpose the defendant Nos. 2 and 3 as plaintiffs.

6. Order I Rule 10 of C.P.C. reads as follows :-

“10. Suit in name of wrong plaintiff.- (1) *Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the Suit has been instituted through a bone fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the court thinks just.*

(2) Court may strike out or add parties—*The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.*

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.

*(4) **Where defendant added, plaint to be amended**—Where a defendant is added, the plaint shall, unless the court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the court thinks fit, on the original defendant.*

(5) Subject to the provisions of the Indian Limitation Act, 1877 (15 of 1877), section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons.”

7. Upon reading the provisions of Order I Rule 10 of C.P.C., it is clear that the application to transpose the defendants as plaintiffs in the facts of the given case was not maintainable. In fact, the defendants Nos. 2 and 3 could file a separate suit claiming one guntha land from defendant No.1. Transposing the defendant Nos. 2 and 3 as plaintiffs would change the very pleadings of the plaintiff. That the plaintiff has consented to transposing the defendant Nos. 2 and 3 as plaintiffs would be no good ground to allow the application as it would change the very nature of the suit. Moreover, no issue was framed in respect of the prayers made by defendant Nos. 2 and 3 in their written statement and, therefore, the Court cannot permit such transposition at a belated stage and permit the witnesses to adduce evidence to that effect. It is in these facts and circumstances, the

order dated 8.11.2016 passed by the Civil Judge, Junior Division, Satara deserves to be quashed and set aside. The learned Court shall proceed with the further proceedings pursuant to the issues that are framed in the said suit and the issues need not be amended at a belated stage.

8. The Petition is allowed. The impugned order dated 8.11.2016 passed by the Civil Judge, Junior Division, Satara, is hereby quashed and set aside. Rule is made absolute accordingly.

(SMT. SADHANA S.JADHAV,J.)