

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8982 OF 2016

1. Smt. Indubai Anandrao Vare,]
Age 80 years, Occ. Retired,]
R/at Malad, Tal. Baramati, Dist. Pune.]
2. Shri Tanaji Anandrao Vare,]
Age 58 years, Occ. Trade and Agriculture,]
R/at Malad, Tal. Baramati, Dist. Pune.]
3. Shri Balasaheb Anandrao Vare,]
Age 56 years, Occ. Service and Agriculture,]
R/at Malad, Tal. Baramati, Dist. Pune.]
4. Shri Sharad Anandrao Vare,]
Age 48 years, Occ. Agriculturist,]
R/at Malad, Tal. Baramati, Dist. Pune.]
5. Smt. Nirmala Prahalad Bhosale,]
Age 62 years, Occ. Retired,]
R/at Sambhajinagar, Pimpalwadi,]
Post Sakharwadi, Tal. Phaltan, Dist. Satara.]
6. Smt. Mangal Manohar Nagvade,]
Age 54 years, Occ. Household,]
R/at Chirag Apartment, Ashoknagar,]
Baramati, Dist. Pune.]
7. Smt. Sarada Suresh Mulik,]
Age 50 years, Occ. Household,]
R/at 10 Biga, Vidani, Tal. Phaltan, Dist. Satara.]
8. Smt. Chhaya Ashok Nikam,]
Age 44 years, Occ. Household,]
R/at Siddhivinayak Apartment,]
Plot No.6, Harikrupa Nagar, Marketyard,]
Baramati, Dist. Pune.] Petitioners

Versus

1. Shri Marutrao Kundalikrao Vare (*Since Deceased*)]
Through Legal Heirs :]

1A) Smt. Sindhubai Marutrao Vare,	]
Age - Adult, Occ. Household.	]
1B) Shri Dattatraya Marutrao Vare,	]
Age - Adult, Occ. Agriculturist.	]
1C) Shri Rajendra Marutrao Vare,	]
Age - Adult, Occ. Agriculturist.	]
1D) Shri Bhausaheb Marutrao Vare,	]
Age - Adult, Occ. Agriculturist.	]
Respondent Nos.1A to 1D are residing at	]
Pawarwadi (Aasu), Tal. Phaltan, Dist. Satara.	]
1E) Smt. Vanita Vishwajeet Devkar,	]
Age - Adult, Occ. Household,	]
C/o. Mohan Jadhav,	]
R/at 1143, "E" Ward, Sekis Extension,	]
Indu Niwas, Takala Chowk, Kolhapur.	]
2. Shri Narayan Kundlikrao Vare,	]
Age 74 years, Occ. Agriculturist,	]
R/at Pawarwadi, Tal. Phaltan, Dist. Satara.	]
Respondent Nos.1 and 2 through their	]
Power of Attorney Holder	]
Shri Dattatraya Marutirao Vare,	]
Age 51 years, Occ. Service and Agriculturist,	]
R/at Pawarwadi, Tal. Phaltan, Dist. Satara.	] Respondents

Mr. Uday B. Nighot for the Petitioners.

None for the Respondents.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 18TH DECEMBER 2017.

P.C. :

1. Heard Mr. Nighot, learned counsel for the Petitioners.
2. By this Petition, filed under Article 227 of the Constitution of India, the Petitioners are challenging the order dated 17th June 2016 passed by the Joint Civil Judge, Senior Division, Baramati, in Special Civil Suit

No.15 of 2013, thereby allowing the application filed at Exhibit-134, subject to costs of Rs.500/-.

3. The said application was filed by the Respondents-Plaintiffs, under Order 1 Rule 10 and under Order 6 Rule 17 of the Civil Procedure Code, in order to add parties (2A) to (2E) as Plaintiffs to the Special Civil Suit No.15 of 2013. The said Suit was filed by the Respondents for partition and perpetual injunction.

4. In the said Suit, Respondents had filed an application at Exhibit-123, under Order 6 Rule 10 of the Civil Procedure Code, for addition of (2A) to (2E) as parties to the Suit on the ground that, (2A) to (2E) are closely related to the Respondents-Plaintiffs being wife, son and daughter-in-law of Respondent No.2. Since Respondent No.2 was acting as a 'manager' of the joint family, they were not made parties to the said Suit. However, thereafter, they came to know that Respondent No.2 has transferred some of the properties in the names of the parties (2A) to (2E) and if they are not made parties to the Suit, then, it may cause difficulty at the time of execution of the Decree. Moreover, it was submitted that, the Petitioners themselves have raised a contention in the written statement that the Suit is not tenable for want of necessary parties, it being a Suit for partition.

5. The Trial Court, after considering the submissions advanced by

learned counsel for both the parties, was pleased to reject the said application holding that it was filed at a belated stage, after recording of evidence was over and even the arguments were heard.

6. This order passed by the Trial Court on 3rd August 2015 came to be challenged by the Respondents by preferring Writ Petition No.12121 of 2015. The said Writ Petition came to be disposed of by this Court, observing that the Respondents have not disclosed in their application (*Exhibit-123*) as to how these persons, namely, (2A) to (2E) are necessary or proper parties and hence it was held that, no case was made out to interfere with the impugned order. Accordingly, the Writ Petition No.12121 of 2015 came to be dismissed. However, at that stage, the leave was sought by learned counsel for the Respondents to file fresh application giving all the necessary particulars for impleading these persons as parties to the Suit and hence it was observed that, if such fresh application is made, all the contentions of the Respondents in that regard are expressly kept open and the Trial Court shall decide the application on its own merits, uninfluenced by the observations made in the impugned order and this order of the Court.

7. In view thereof, the Respondents filed this fresh application at *Exhibit-134* stating as to how, initially, Respondents thought that the joinder of parties (2A) to (2E) was not necessary in the Suit, as Respondent No.2 was acting as a 'manager' of the joint family. However,

as it was revealed that Respondent No.2 has transferred some of the properties in the names of parties (2A) to (2E), they need to be joined in the Suit, otherwise, there would be some difficulty at the time of execution of the Decree. Thus, by making this specific averment and adding further provision of Order 1 Rule 10 of CPC, the fresh application was filed seeking impleadment of these persons, namely, (2A) to (2E), so that the matter can be decided on merits.

8. This application was strongly resisted by the present Petitioners contending that, there is an inordinate delay in filing of the said application. Since beginning, the Respondents were aware about the contentions raised by the Petitioners in their written statement that the Suit was liable to be dismissed for non-joinder of necessary parties. Despite that, before framing of issues, the plaint was not amended. Thereafter also, the matter was allowed to be proceeded further and when it came for Judgment, after recording of evidence and hearing of arguments, such application was filed, purely with an intention to protract hearing of the proceedings; especially, knowing fully well that partition has already been effected and, therefore, such application, which was already rejected, now should not be allowed.

9. The Trial Court, vide its impugned order, however, held that, under Order 1 Rule 10(2) of CPC, the Court is empowered to add any person as a party to the Suit, if such person ought to have been joined as a

Plaintiff/Defendant and not joined and without whose presence, the question involved in the Suit cannot be completely decided. Relying on this provision and considering that on the technical ground, the Suit should not be dismissed, the Trial Court has allowed the said application (*Exhibit-134*).

10. The submission of learned counsel for the Petitioners is that, as per the Proviso of Order 6 Rule 17 of CPC, the amendment in the pleadings can be permitted, only before the commencement of the trial, and in no case thereafter, unless exercise of due diligence is shown. In this case, it was submitted that, there is clear absence of averment as to exercise of due diligence on the part of the Respondents, in filing such application for amendment at the belated stage; especially, on the facts of the case, when Petitioners have raised this ground in the written statement itself. Thus, it is submitted that the Trial Court has committed an error in allowing this application (*Exhibit-134*) at the stage of Judgment, when the Suit was bound to be dismissed on this very ground of a non-joinder of necessary parties.

11. Admittedly, this is a Suit for partition and the law is well settled that for partition, all the persons, who are having shares and interests in the joint family property, are the necessary parties and without their presence, Suit cannot be decided effectively. The Trial Court has considered this aspect and also the aspect that, if the presence of a

particular party is necessary for deciding the Suit, then, even the Court can, on its own, suo-motu add the name of that party, so that the questions involved in the Suit can be decided finally.

12. Here in the case, it may be true that, conduct of Respondents-Plaintiffs may not be strictly of a due diligence, but, if, merely on account of such delay, this application is to be rejected, then, it will give rise to multiplicity of proceedings because, otherwise also, even if the Suit is dismissed merely for non-joinder of necessary parties, the Respondents-Plaintiffs will not be deprived from filing fresh Suit on the same cause of action and then again there will be another round of litigation. The interest of justice always requires that there should be an end to the lis, so that the parties can be at peace. Here in the case, even it is accepted that the arguments were heard and the matter was kept for Judgment, in that case also, addition of parties will not involve recording of fresh evidence like having the proceedings like new Suit.

13. Conversely, if such application is rejected, then, it will give rise to fresh round of litigation and hence, the trial Court has rightly exercised its own powers under Order 1 Rule 10(2) of CPC, so that the matter can be decided finally and on merits. In order to compensate the Petitioners, the costs of Rs.500/- is also imposed.

14. Thus, having regard to the impugned order passed by the Trial Court, no illegality can be found so as to warrant interference therein. The Writ Petition, therefore, being without merits, stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]