

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

WRIT PETITION NO. 3187 OF 2017

SUDAM KASHINATH TAPSE
VERSUS
VAIBHAV AND VAISHNAVI SURESH GHUMARE BOTH
MINOR THU LEGAL GUARDIAN SIDHUBAI SURES

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Advocate for Petitioner : Mr Anjanwatikar Vinay B

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CORAM : V.K. JADHAV, J.
Dated: January 25, 2018

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PER COURT :-

1. Respondent nos. 1 to 3 /original plaintiff instituted the Regular Civil Suit No.218/2007 for partition and separate possession. The said suit came to be dismissed by the trial court by judgment and order dated 22.11.2014. Being aggrieved by the same, respondent nos. 1 to 3/original plaintiffs preferred Regular Civil Appeal No.187/2014. Pending the appeal, respondent nos. 1 to 3/original plaintiffs filed an application exh.5 under Order 1 Rule 10 for addition of the necessary party. It has been contended in the said application that in the suit for partition, plaintiffs have not impleaded their grandmother Indubai as necessary

party to the suit. Present petitioner/original defendant no.1 has strongly resisted the said application on the ground that in the suit, petitioner has taken a specific defence for non-joinder of necessary party. The trial court has also framed issue on the point of non joinder of necessary parties and after full fledged trial of the suit, recorded findings to the effect that suit is bad for non-joinder of the necessary parties. The learned District Judge No.5-Bed by impugned order dated 10.1.2017 allowed the application subject to costs of Rs.2,000/- Hence, this writ petition.

2. Learned counsel for the petitioner/original defendant no.1 submits that, when the suit was dismissed on the ground of non-joinder of necessary parties, the appellant/plaintiff before the lower appellate court are not entitled to fill up the lacuna left in the plaint.

3. It is not the matter in dispute that, grand mother is necessary party in a suit for partition and she has

also a fix share in the joint property. The petitioner/original defendant no.1 is the purchaser from the husband of original plaintiff no.1. Even, in pending appeal, by taking recourse to the provisions of Order 1 Rule 10(2) of the Civil Procedure Code, if appellants/original plaintiffs are permitted to implead the said grand mother as party, no prejudice is likely to be caused to the defence of the petitioner/original defendant no.1. The appeal is pending since 2014. In view of the same, there is no reason to interfere in the impugned order. Writ Petition accordingly dismissed. No costs.

(V.K. JADHAV, J.)

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