

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

WRIT PETITION NO. 14606 OF 2017

Suryabhan Namdeo Jondhale
Age 64 years, occup. Agriculture &
Business, R/o Kashi Nivas, Ramdas,
Swami Nagar, Takli Road, Behind
Gandhi Nagar, Nashik – 422006

.. Petitioner /
Original
Defendant
No.1

versus

- | | | |
|---|---|--|
| 1 | Popat Bhimaji Jondhale,
Age 57 years, occup. Agriculture,
R/o Nimgaon-Jali, Tal. Sangamner,
Dist. Ahmednagar | .. Respondents/
(Original
Plaintiff) |
| 2 | Chandrakant Namdeo Jondhale,
Age 67 years, occup-Business,
R/o N31/A1/12-9, Sambhaji Chowk,
Vijaynagar, New CIDCO,
At PO – Nashik | .. Defendant
No. 2 to 5
respectively |
| 3 | Sanjay Karbhari Jondhale,
Age 37 years, Occu-Business,
R/o Tara Nivas, Ramdas Swami Nagar,
Takli Road, Nashik. | |
| 4 | Rajendra Karbhari Jondhale,
Age- 42 years, Occu-Business &
Agriculture, R/o Kashi Nivas,
Ramdas Swami Nagar, Takli Road,
Behind Gandhi Nagar, Nashik 06 | |
| 5 | Tarabai Karbhari Jondhale,
Age 74 years, Occu- Household, | |
| 6 | Smt. Manisha Manoj Jondhale,
Age 44 years, Occu- Household, | |
| 7 | Sidhesh Manoj Jondhale,
Age 14 years, Occu- Education, through
respo. 6 mother as guardian, | |

- 8 Aishwarya Manoj Jondhale,
Age 20 years, Occu- Education,

No. 5 to 8 R/o- same address that
of Respo. no. 3.
- 9 Tarabai Bhagwat Vadak,
Age 78 years, Occu- household,
R/o- Nimgaon-Jali, Tal-Sangamner,
Dist- Ahmednagar.
- 10 Sau. Megha Ramesh Mudbakhe,
Age 42 years, occu- household,
R/o- 4 Sanket sankul, Oppo.
Patidar Bhuvan, Gen. Vaidya
Nagar, Nasik Pune Road, At PO
Dist – Nashik.
- 11 Baban Bhimaji Jondhale,
Age 71 year, Occu- Agriculture,
- 12 Gangadhar Bhimaji Jondhale
Age 60 years, Occu- Agriculture,
- 13 Smt. Vimal Ramnath Jondhale,
Age 74 years, Occu- Household,

No. 11 to 13 R/o- Nimgaon-Jali,
Tal-Sangamner, Dist-Ahmednagar.
- 14 Indubai Ashok Vadak,
Age 42 years, Occu- Household,
R/o- CIDCO, Nashik.
- 15 Ratan Sadashiv Gade,
Age 37 years, Occu- Household,
R/o- Baragaon nandur, Tal- Rahuri,
Dist- Ahmednagar.

Mr Vinod Y. Bhide, Advocate for petitioner
Mr P. V. Barde, Advocate for respondent no.1

CORAM : SUNIL P. DESHMUKH, J.
DATE : 21st August, 2018

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned counsel for parties by consent finally.
2. Petitioner – original defendant no. 1 s purport to be aggrieved by order dated 15-11-2017 passed by 2nd Joint Civil Judge, Senior Division, Sangamner whereunder application Exhibit - 57 filed by present respondent no. 1- original plaintiff in regular civil suit bearing no. 1154 of 2005 for addition of parties by way of amendment has been allowed. Said suit has been preferred by present respondent no. 1 seeking setting aside of decree of partition, for partition, certain declaratory reliefs and injunction as against defendants no. 1 to 10. In said suit, his sisters Shantabai and Sakhubai were not added as defendants and objection had been taken by petitioner about non impleading of necessary parties. Accordingly issue with regard to the suit being bad for non joinder of the parties had also been framed. Plaintiff as well as defendants have led their evidence and thereafter application Exhibit - 57 has been moved.

3. Learned counsel for petitioner submits that application Exhibit - 57 obviously has been made to remove lacuna in the suit long after issues had been framed and evidence had been led. He submits, application is a dilatory tactic and learned judge has allowed the same without calling upon response of the parties to be added. He submits such an application under Order VI, rule 17 of the Code of Civil Procedure, 1908 could not have been entertained as being an application for amendment. He submits that at the fag end of the trial of the suit, application has been moved with a view to harass and vex the defendants. Learned judge, according to learned counsel, has not taken into account all aforesaid aspects and has generally considered the application and allowed the same.

4. On the other hand, learned counsel appearing for original plaintiff – respondent no. 1 herein submits that it was petitioner's own case about the suit suffering for non arraigning necessary parties and while having been found that technically it would be appropriate to add sisters as defendants, an application, may be at belated stage, had been moved yet, the same does not cause any prejudice to the petitioner. Court has accordingly allowed the application

and the order does not come free for the plaintiff as the court has imposed costs of ₹ 200/-. He submits that while it is the case of petitioner himself for want of parties suit suffers and said lacuna being removed under the order impugned, he has no legs to stand on to sustain an objection, to the application. He submits that all the contentions of petitioner are technical. He, therefore, urges not to interfere with impugned order invoking extra-ordinary powers of this court.

5. Having regard to nature of the suit and application Exhibit - 57, it appears that the application has been allowed by the court in its discretion. The court under paragraph no. 3 of the judgment has given reasons which weighed with it for exercise of discretion in favour of the plaintiffs.

6. In the circumstances, it does not appear that this is a case to cause interference with impugned order in further exercise of discretionary powers save amount of ₹ 200/- granted which appears to be far too low may have to be enhanced.

7. In the circumstances, amount of costs of ₹ 200/- granted under impugned order dated 15-11-2017 is raised to Rs.5000/-. The impugned order stands modified to that

extent. Save this, rest of impugned order stands as it is and is undisturbed. Costs be deposited in trial court as early as possible preferably within a period of six weeks from the date of receipt of writ of this order for onward disbursement to the respondent no. 1 - plaintiff.

8. Rule made partly absolute as aforesaid.

9. Writ petition is disposed of.

SUNIL P. DESHMUKH,
JUDGE

pnd/-