

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

33 WRIT PETITION NO. 14965 OF 2017

KIRANSHANKAR JANARDHAN KAHALEKAR AND ANOTHER
VERSUS

ISHWARAYYA GURU KARBASSYYA DIED THRU LRS
KARBASYA GURU ISHWARAYA AND OTHERS

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Advocate for Petitioners : Mr. S. P. Katneshwarkar h/f
Mr. Patekar Narendra B.

Advocate for Respondent No.1 : Mr. Pathan Hamzakhan I.

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CORAM : V. K. JADHAV, J.
DATED : 9th APRIL, 2018

PER COURT:-

1. Heard finally with consent at admission stage.
2. The respondent no.1/original plaintiff has instituted the suit for declaration of ownership, recovery of possession and a decree of perpetual injunction in respect of the landed property against respondent no.2-Co-operative Housing Society and its members. In the pending suit, the present petitioners have filed an application Exhibit 340 under Order 1 Rule 10 of the Code of Civil Procedure for impleading them as a party defendants. It is the case of the petitioners/applicants that original defendant no.1-Co-operative Housing Society has allotted plot no.4 to the father of petitioner no.1 and plot no.45 to the petitioner no.2. As

such, they are the owners in possession of the said plots and their legal rights are involved in the matter. The respondent no.1/plaintiff has strongly resisted the said application by filing say. The learned Joint Civil Judge, Junior Division, Court No.3, Basmath, by the impugned order dated 02.11.2017, rejected the said application. Hence this Writ Petition.

3. The learned counsel for the petitioners submits that respondent no.1 has instituted the suit with the prayers as mentioned above by impleading the Co-operative Housing Society as party defendant no.1 and also its members. However, the present petitioners, though have been allotted plots by the said Co-operative Housing Society, are not impleaded as party defendants in the suit.

4. The learned counsel for respondent no.1/original plaintiff submits that the suit is of the year 2001 and after 17 years, the present petitioners have approached the court by filing application Exhibit 340 for impleading them as party defendants to the suit. The learned counsel submits that the Co-operative Housing Society is impleaded as party defendant no.1 and as

such, individual presence of the members such as the petitioners is not required. The learned counsel submits that if the same is permitted, the remaining members would also file their applications for impleading them as party defendants and as such, hearing of the suit would be delayed indefinitely.

5. So far as the petitioners are concerned, is not disputed that plot no.4 came to be allotted to the father of petitioner no.1 whereas plot no.45 has been allotted to the petitioner no.2. On perusal of copy of the plaint, it appears that respondent no.1/original plaintiff has impleaded near about 52 members of the said Co-operative Housing Society as party defendants. It is not clear as to why respondent no.1/plaintiff has not impleaded the present petitioners as party defendants to the pending suit. Furthermore, even if the submissions made on behalf of respondent no.1/plaintiff are accepted to the effect that the Co-operative Housing Society is impleaded as party defendant and presence of the individual members is not required, however, the respondent no.1/plaintiff himself has impleaded near about 52 members of the said Society as party defendants to the suit. So far as delay in disposing of the suit is concerned, the trial court

may consider impleading of the members as party defendants and defendant no.1 may bring it to the notice of the court as to how many members are their in total. However, apart from this, the petitioners' application under Order 1 Rule 10 of C.P.C. deserves to be allowed. They are the necessary parties in the sense that the other members are also impleaded as party defendants in the suit. Hence the following order:

ORDER

- I. The Writ Petition is hereby allowed. No costs.
- II. The impugned order dated 02.11.2017 passed at Exhibit 340 in R.C.S. No.84 of 2001 by the Joint Civil Judge, Junior Division, Court No.3, Basmath, is hereby quashed and set aside.
- III. The application Exhibit 340 is hereby allowed in terms of its prayer clause.
- IV. The trial court is hereby directed to dispose of the pending suit as expeditiously as possible, preferably within a period of six months from today.
- V. The Writ Petition is accordingly disposed of.

(V. K. JADHAV, J.)