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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 9135 OF 2017

Kisan @ Krishna Bhagaji

Pol (Mahar) and ors

... Petitioners

V/s.

Bharat Bhagwat Pol and ors

... Respondents

Mr. Smit Kumbhakoni, for the Petitioners

Mr. Sandeep Barve i/by B.K. Barve & Co., for
the Respondent No.5.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 4th JANUARY, 2018.

P.C. :

1] By this petition, the petitioners are challenging the order dated 13.06.2017, passed by the II nd Jt Civil Judge J.D. Indapur, below Exh.102 in R.C.S.No.87 of 2005. Application Exh.102 was filed by the Petitioners under Order I, Rule 10 of Code of Civil Procedure, for impleading them as party defendants in the suit which is filed by respondent No.5.

2] It is submitted by learned counsel for petitioners that the respondent No.5-plaintiff has filed R.C.S.No.87 of 2005; whereas the petitioners have filed R.C.S.No.51 of 2014. Both the suits pertain to the same property bearing survey No.74/1 situate at Indapur. Both of

them are claiming to be the legal heirs and owners of the property. The petitioners have joined respondent No.5 in their suit as defendant No.10. However, petitioners' application for joining them as defendants in the suit of Respondent No.5 bearing R.C.S.No.87 of 2005, came to be rejected on the ground that the suit is already fixed for argument. The recording of the evidence is complete. The suit is filed in the year 2005; whereas the petitioners have filed their suit in the year 2014; but despite that petitioners did not act with due diligence; and prima facie the petitioners have failed to show their right and interest in the suit property.

3] In my considered view, as the suit property involved in both the suits is one and the same and as respondent No.5 is already impleaded as defendant No.10 in R.C.S. No.51 of 2014, interest of justice requires that the petitioners be also made party defendants in a suit bearing R.C.S.No.87 of 2005, filed by respondent No.5, in order to avoid any conflicting decisions in respect of the same subject matter. Hence on this sole ground only, the impugned order passed by the trial Court needs to be set aside and the application filed by the petitioners' Exh.102 is required to be allowed.

4] However, considering that the suit filed by respondent No.5 is of the year 2005, interest of justice requires that the petitioners' suit bearing R.C.S.No.51 of 2014 and R.C.S.No. 87 of 2005,

be decided together as expeditiously as possible.

5] Accordingly, writ petition is allowed.

6] The impugned order passed by the Trial Court is hereby quashed and set aside. Application filed by the petitioners Exh.102 is allowed.

7] The necessary amendment to be carried out within two weeks from the date of receipt of this order by the Trial Court. The trial Court, thereafter shall expedite the hearing of both the suits and decide the same as early as possible.

8] It is made clear that all rights and contentions raised by both the parties are kept open to be decided by the trial Court, on its own merits.

[DR. SHALINI PHANSALKAR-JOSHI, J.]