

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9421 OF 2019

1 Ramdas Shripati Bothe
Age: 51 years, Occu: Agril

2 Sau Kunda Muktaji Dandge,
Age:48 years, Occu: Household

3 Sau. Kantabai Maruti Jasud
Age: 51 years, Occu: Household

4 Gitaram Shripati Bothe
Age: 71 years, Occu: Agri

5 Gorakh Ganpat Bothe,
Age: 59 years, Occu: Agril.,

6 Nanda Arun Shinde
Age: 48 years, Occu:Household

All R/o Walki, Tal. Nagar,
Dist. Ahmednagar

Petitioners No.1 to 6 through their
GPA Holder Popat Gitaram Bothe
age: 50 years, Occu: Agri.
R/o Walki, Tal. Nagar,
Dist: Ahmednagar

Petitioners

versus

1 Baban Narayan Bothe,
Age: 69 years, Occu: Agri.

2 Rajendra Baban Bothe
Age: 33 years, Occu: Service

Both R/o Walki, Tal. Nagar
Dist: Ahmednagar

Respondents

Mr. P.R. Nangre advocate for the petitioners
None present for respondents.

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CORAM : RAVINDRA V. GHUGE, J.

Date: August 1st, 2019

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ORAL JUDGMENT

1 None present for the respondent, even at the second call.

2 The petitioners, original defendants are aggrieved by the order dated 7.12.2018, by which, the Trial Court has allowed Application Exhibit 120, filed by the original plaintiff in RCS No.656/2014, seeking addition of a party under Order 1, Rule 10 of the code of Civil Procedure. Four persons are sought to be added as the defendants.

3 Learned Advocate for the petitioners, has strenuously criticized the impugned Order. He submits that, the addition is unnecessary. It is settled law that the plaintiff is *dominous litus* and is therefore, the master of the suit. If necessary or proper parties are not arrayed, those parties who feel that the decision in the suit would impact them, can come forward and seek addition. Merely because, the plaintiffs are *dominous litus*, does not mean that, they can add parties at any time in the suit. Due diligence has not been explained.

4 He then draws my attention to the ten grounds formulated in the memo of the petition. It is contended that, such addition has to be done immediately. Any addition at a final stage, would delay the matter and the plaintiffs desire to cause hardships to the defendants, by delaying the matter. The suit was adjourned

for advancing final arguments and is now posted for Judgment. Exhibit 120 was filed thereafter.

5 I find that, the suit is for declaration of title. Section 34 and 39 of the Specific Relief Act have been invoked. Injunction is also sought.

6 In this backdrop, as the predecessor in-title of the defendants Shripati Madhav Bothe had passed away, their entire legal heirs, who are six in numbers, need to be brought on record. Since two of them are already on record, the plaintiffs realized that, the remaining four Legal Heirs need to be arrayed in the suit, as it would cause an irreparable harm to the plaintiffs and a permanent legal deficiency would remain in the suit.

7 I do find that the plaintiffs have acted negligently and have approached the Court for addition of parties, at a stage when the final arguments were being advanced and the Court has reached the stage of pronouncing a Judgment. The only legal exigency would be that, if the suit is decided and the Judgment impacts the legal heirs, who are not brought on record, it would cause as irreparable harm. Costs can be imposed to penalize the plaintiffs for the delay.

8 It is only with this object and to avoid multiplicity of litigation that, I am not causing any interference in the impugned order, permitting the plaintiffs to array the four defendants.

However, certain directions are necessary in this back-drop, since the suit is of 2014 and is already five years old.

9 As such, this petition is partly allowed. Without causing any interference in the impugned order, I am issuing the following directions:-

(a) The costs of Rs.500/- awarded to the defendants No.1 to 6, now, shall stand increased and the plaintiffs shall pay costs of Rs.1,000/- to each of the defendants No.1 to 6. The amount shall be deposited before the Trial Court on or before 21.8.2019, failing which, this order shall stand recalled and the plaintiffs shall lose their right to array defendants No.7 to 10 in the proceedings.

(b) The learned Advocate for the petitioners informs that, pursuant to the impugned order, amendment is carried out, notices are issued, the added defendants have appeared, they have filed their written statements and the matter is at the stage of recording their evidence. Therefore, the Trial Court shall refuse adjournments to the said newly added defendants, if it is noticed that they are seeking adjournments on unreasonable grounds.

(RAVINDRA V. GHUGE, J)