

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1932 OF 2017

Mrudula Keshav Thakur and Anr. ...Petitioners

vs.

Vaishali Ashok Kanitkar and Anr. ...Respondents

Mr. K.V. Tembe, for the Petitioners

Ms. Manjiri Parasnis, for Respondent No. 2.

CORAM : M. S. SONAK, J.

DATE : APRIL 10, 2019

P.C.:

. Heard Mr. Tembe, learned counsel for the Petitioners and Ms. Parasnis, learned counsel for the Respondent No. 2.

2. The challenge in this Petition is to the order dated 18th October, 2016 by which the learned trial Judge has dismissed the Petitioners' application (Exhibit 26) seeking direction to the Respondents-Plaintiff to implead Sanjay K. Thakur as Defendant in the suit.

3. Mr. Tembe submits that Sanjay K. Thakur which is the brother of the Plaintiff is necessary party. He submits that Respondents-Plaintiff seeks to prove a Will purported in this suit

and in this regard presence of Sanjay Thakur is necessary. The learned trial Judge has rejected this application.

4. The Petitioners is Defendants in the suit. The Petitioners at the earlier instances have taken defence that the suit is not maintainable for want of joinder of necessary parties. It is for the Petitioners to make good this defence. If the court ultimately comes to the conclusion that Sanjay Thakur was indeed a necessary party but has not been joined as a party by the Respondents-Plaintiff then it is open to the learned trial Judge to pass appropriate orders including the order for dismissal of the suit. However, the Petitioner as a Defendant, can not, in the circumstances, of the present case insist that the Respondents-Plaintiff, joined Sanjay Thakur as either co-Plaintiff or co-Defendant in the suit. The Respondents-Plaintiff is *Dominus Litus* and it is for the Respondents- Plaintiff to take a call in the matter.

5. Accordingly, there is no case made out to interfere in the impugned order. The learned trial Judge will however determine at the proper stage where the suit should failed for want of joinder of necessary parties.

6. All contentions of all the parties are left open.
7. Petition is disposed of in the aforesaid terms
8. There shall be no order as to costs.

(M. S. SONAK, J.)