

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.1082 OF 2019

Shantaram s/o Gajananrao Balpande and anr.

-vs-

Banubai wd/o Gajananrao Balpande and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Ms S. G. Barbate, Advocate for petitioners.

Shri S. M. Ghodeswar, AGP for respondent Nos.12 and 13.

CORAM : A.S.CHANDURKAR, J.

DATE : April 16, 2019

Service on all respondents is complete.

In terms of order dated 12/02/2019 the writ petition is taken up for final disposal. Shri S. M. Ghodeswar, learned Assistant Government Pleader waives notice of hearing for respondent Nos.12 and 13.

2. The petitioners are the original plaintiffs who have filed suit for declaration that sale-deed dated 28/11/2016 executed by the defendant No.1 is a void document and that it is not binding on the plaintiffs as well as Vithhal Rukamai Deosthan. Other ancillary reliefs have also been sought. In that suit the plaintiffs filed an application below Exhibit-58 seeking addition of Vithhal Rukamai Deosthan as defendant No.14. In the application it was stated that

though the property in question was recorded in the name of said Deosthan, it was not joined as a defendant. The trial Court rejected that application by observing that since the plaintiff claimed reliefs in favour of the proposed defendants such addition could not be permitted.

3. After hearing the learned counsel for the petitioners as well as the learned Assistant Government Pleader for respondent Nos.12 and 13 it can be seen that the relief sought in the suit is for a declaration that the sale-deed executed by defendant No.1 in respect of the property as described in the schedule to the plaint also concerns the proposed defendant. According to the plaintiffs the said property is owned and possessed by the Deosthan and the Management lies with the plaintiff No.1. Considering the nature of reliefs as sought in the suit it is clear that the proposed defendant was a necessary party for being added. The trial Court was not justified in rejecting the said application on the count that as relief was sought in favour of the proposed defendants, joinder of the parties could not be permissible. Moreover, this prayer for joinder was not opposed by the defendants even before the trial Court.

4. In that view of the matter, the order passed below Exhibit-58 dated 10/01/2019 is set aside. The application below Exhibit-58 stands allowed. The plaintiffs shall take necessary steps in that regard for addition of defendant No.14.

Writ Petition is allowed in aforesaid terms. Rule is made absolute with no order as to costs.

JUDGE