

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 2492/2017

(MAROTI NARAYAN KALDATE & ANR **VERSUS** TALATHI MAUJE BHAR JAHANGIR, WASHIM & ORS)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri M.L. Vairagade, counsel for petitioners.
Shri S.M. Ghodeswar, A.G.P. for R-1 to 3.

CORAM : A.S. CHANDURKAR, J.

DATE : APRIL 18, 2019.

In view of notice for final disposal issued earlier, the learned counsel for the petitioners as well as the learned Assistant Government Pleader for the respondent nos.1 to 3 have been heard. The respondent nos.4 and 5 despite service have not chosen to contest the writ petition.

The petitioners are the original plaintiffs who have filed suit for mandatory injunction seeking to restrain the respondent nos.1 to 3 herein from taking any mutation entries in respect of Field Survey No.43/1 admeasuring about 1 Hectare 89 R. It is the case of the petitioners that they have purchased the aforesaid property *vide* sale-deeds dated 04.02.2000, 05.02.2004 and 21.05.2004. In proceedings for recording mutation entries, the petitioners got knowledge that on account of some other proceedings entertained by the Revenue Authorities, the names of the petitioners were not being mutated hence the aforesaid suit came to be filed. In that suit, the respondent no.4 filed an application for being impleaded under provisions of Order I Rule 10 of the Code of Civil Procedure, 1908. The said respondents claimed entitlement to the aforesaid agricultural fields on the basis of sale-deeds standing in their favour. By the impugned order, that application was allowed by the trial Court.

Shri M.L. Vairagade, learned counsel for the petitioners submitted that considering the nature of relief sought in the suit, the trial Court was not justified in directing addition of said parties. He submitted that the petitioners had valid title to the suit properties and therefore the relief as sought ought to have been granted against the respondent nos.1 to 3.

Shri S.M. Ghodeswar, learned Assistant Government Pleader for respondent nos.1 to 3 relied upon the reply as filed and supported the impugned order. According to him, since the respondent nos.4 and 5 were also claiming title to the suit properties, their addition was justified.

After hearing the learned counsel for the parties and after perusing the documents on record, it is seen that the respondent nos.4 and 5 claim title on the basis of adjudication in Regular Civil Suit No.19 of 1999. On the other hand, the plaintiffs are claiming title on the basis of sale-deeds dated 04.02.2000, 05.02.2004 and 21.05.2004. Considering the nature of relief sought in the suit it cannot be said that the trial Court erred in directing addition of the respondent nos.4 and 5. Their addition would resolve the aspect with regard to entitlement of the petitioners to the reliefs sought in the suit. Moreover, it is always open for the petitioners to seek appropriate relief if necessary by amending the plaint if they desire to seek a declaration as to their title. In that view of the matter, the impugned order does not call for any interference. It is open for the petitioners to seek further relief in the same suit in accordance with law if they desire to challenge the title of the respondent nos.4 and 5.

With these observations, writ petition is disposed of.

JUDGE

APTE