

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

Writ Petition No.3343 of 2016

**(Shri Pradip Pushkarmal Gupta .vs. Shri Pushkarmal Holkarmal Gupta and
ors.)**

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

Court's or Judge's orders.

Mr. Abhishek Shukla, Advocate for Petitioner.

CORAM : Manish Pitale, J.
DATED : May 2, 2019.

By this writ petition, the petitioner has challenged order dated 20.01.2016 passed by the Court of 2nd Joint Civil Judge, Junior Division, Khamgaon (trial Court), whereby an application filed by original respondent no.6 under Order 1 Rule 10 of the Code of Civil Procedure, 1908 (CPC) for being added as a party in the suit filed by the petitioner, has been allowed.

2. The petitioner filed a suit for partition and separate possession against respondent nos. 1 to 5, who are his parents and siblings, contending that he is entitled to his right, share and possession in the suit property, consisting of agricultural land along with wells and trees etc. as described in paragraph 1 of the plaint. It is pointed out that the original defendant no.1 (respondent no.1 herein) i.e. father of the petitioner appeared before the trial Court and filed a written statement conceding to the claim made by the petitioner. The other original defendants i.e. respondent

nos. 2 to 5 herein have not filed any written statement in the suit.

3. At this stage, the respondent no.6, who is now represented through his legal representatives before this Court, filed an application under Order 1 Rule 10 of the CPC, claiming that he was entitled to be added as party in the aforesaid suit, on the ground that, according to him, the respondent no.1 was not the exclusive owner of the suit property and that there were certain tenancy proceedings demonstrating that he was not found to be the only person in possession of the suit property as a tenant. The respondent no.6 claimed that the orders passed in the said tenancy proceedings were enough to show that he was necessary party in the suit for partition and separate possession filed by the petitioner.

4. The trial Court passed the impugned order recording the contentions raised on behalf of the rival parties and upon concluding that the contentions raised on behalf of the respondent no.6 were correct, proceeded to allow the application. The perusal of the impugned order shows that there is no examination of the question as to whether the presence of the respondent no.6 was necessary to effectively and completely decide the questions in controversy that arose in the suit filed by the petitioner. The Trial Court has proceeded on the basis that the statements made on behalf of the respondent no.6 were gospel truth. The nature of statement made in the application on behalf of the respondent no.6 shows that if at all he has

any right in the suit property, he would be required to institute a separate suit to assert the same by procedure known to law. The real question in controversy in the present case is regarding claim of the petitioner to his share in the suit property as per the averments made in the suit for partition and separate possession. The trial Court failed to appreciate that the claims made on behalf of the respondent no.6 were completely alien to the real question in controversy in the present case and that respondent no.6 failed to make out a case in his favour for being joined as a defendant in the aforesaid suit.

5. Despite notice served upon the legal representatives of contesting respondent no.6, they have chosen not to appear before this Court. The sufficient opportunities were granted by this Court to the said legal representatives of respondent no.6 to appear before this Court, yet they have chosen not to appear.

6. In these circumstances, for the reasons stated above, the present writ petition is allowed and the impugned order is quashed and set aside.

JUDGE