

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

**Writ Petition No.4882/2018**

**(Ashok Dattatraya Mendhurwar .vs. Ashok Laxman Dole and ors. )**  
**with**

**Writ Petition No.4617/2016**

**(Ashok Dattatraya Mendhurwar .vs. Ashok Laxman Dole and ors. )**

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| Office Notes, Office Memoranda of Coram,<br>appearances, Court's orders or directions<br>and Registrar's orders | Court's or Judge's orders. |
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Mr. V.V. Deo, Advocate for Petitioners in both writ petitions.

Mr. A.S. Joshi, Advocate for Respondent Nos. 2 to 4 in  
W.P.No.4882/18 and for Respondent Nos. 2 to 4 and 8 in  
W.P.No.4617/2016.

Mr. R.R. Srivastava, Advocate for Respondent No.5 in  
W.P.No.4617/18.

**CORAM : Manish Pitale, J.**

**DATED : January 09, 2019.**

By these two writ petitions, the petitioner (original plaintiff) has approached this Court challenging orders passed by the Court below only partly allowing application for amendment of plaint and in rejecting application under Order 1 Rule 10(2) of the C.P.C. for addition of parties.

2. The petitioner contends that while the Court partly allowed his application for amendment of the plaint by allowing him to add paragraph 7A to the plaint, the amendment sought in the prayer clause was rejected. A grievance is sought to be made on behalf of the petitioner in that regard. But, a perusal of the amendment sought to be made in the prayer clause shows that the plaintiff is seeking a direction from the

Court against the defendants for being liable for punishment for fraud and perjury. The Court below is justified in holding that such a prayer could not be permitted in a suit for declaration and mandatory injunction filed by the petitioner against the respondents on the allegation that respondent nos. 1 to 4 have encroached upon part of the suit property belonging to the petitioner. No fault can be found with the aforesaid order dated 13.07.2017 passed by the Court below in Regular Civil Suit No. 1180 of 1990. Therefore, Writ Petition No. 4482 of 2018 challenging the said order is dismissed.

3. By Writ Petition No. 4617 of 2016, the petitioner has challenged order dated 05.01.2016 whereby his application under Order 1 Rule 10(2) of the C.P.C. for addition of parties was rejected and order dated 08.03.2016 whereby application filed by the petitioner for setting aside the order dated 05.01.2016, was rejected.

4. A perusal of the impugned order dated 05.01.2016 shows that the Court below has rejected the application of the petitioner under Order 1 Rule 10(2) of the C.P.C. on the ground that the parties sought to be added by the petitioner are neither necessary nor proper parties in the suit filed by the petitioner. The contention of the petitioner in the application before the trial Court was that the parties sought to be added as defendants being sisters of the respondent no.1 (original defendant No.1) were party to a compromise decree

filed in another suit which concerned a property dispute between the defendant no.1 and his family members inter se. It was contended that the compromise decree passed in the aforesaid suit had a bearing in the present case insofar as the two sisters of the respondent no.1 were required to be added as party defendant in the said suit. It was brought on record before the Court below that by virtue of the compromise decree passed in the suit initiated by family members of respondent no.1, the two sisters proposed to be added as respondents had already relinquished their share in the property which was adjacent to the suit property in the present case. The two proposed defendants had already relinquished their share in favour of respondent no.1 (original defendant no.1 in the present proceedings). It was also stated on oath before the Court below that by virtue of the said relinquishment deed, the said proposed parties had already relinquished their rights in the property adjacent to the property concerned with the present litigation. In this situation, the Court below found that the application filed by the petitioner was not tenable as the two proposed defendants being sisters of respondent no.1 were neither necessary nor proper parties.

5. Looking to the material on record and the fact that a statement has been made on oath before the Court below regarding relinquishment of rights by the said proposed parties in favour of respondent no.1, it cannot be said that the Court below has committed an error in passing the impugned order dated 05.01.2016.

The impugned order dated 08.03.2016 is nothing but dismissal of an application filed on behalf of the petitioner for setting aside the order dated 05.01.2016 and, therefore, the trial Court has reiterated what was held in the order dated 05.01.2016. Since it is found that the said proposed parties cannot be said to be either necessary or proper parties, the impugned orders do not deserve any interference.

6. In the light of the above, Writ Petition No. 4617 of 2016 is also dismissed.

**JUDGE**

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