

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

WRIT PETITION NO.1539 OF 2017

Narmada w/o Tukaram Bhurkande, Thr. PAO Nivas s/o Devidas Lathod and ors.

-vs-

Ganesh s/o Mahadeo Thakre and ors.

WITH

WRIT PETITION NO.2958 OF 2018

Radhabai Sampat Sasane

-vs-

Ganesh s/o Mahadeo Thakre and ors.

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

Court's or Judge's Orders.

Shri V. B. Bhise, Advocate for petitioner in W.P.No.1539/2017.

Shri U. J. Deshpande, Advocate for respondent Nos.1 and 2 in W.P.
No.1539/2017.

Shri R. D. Dhande, Advocate for petitioner in W.P. No. 2958/2018 and
for respondent No.3 in W.P. No.1539/2017

Shri S. A. Mohta, Advocate for respondent Nos.1 and 2 in W.P. No.
2958/2018.

CORAM : A.S.CHANDURKAR, J.

DATE : April 16, 2019

Heard finally with consent of learned counsel for the parties.

The orders passed on the application filed under provisions of Order I Rule 10 of the Code of Civil Procedure, 1908 refusing permission to the applicants therein for being impleaded as defendants is the subject matter of challenge in these writ petitions.

2. In W.P.No.1539/2017 the respondent Nos.1 and 2 have filed suit against the respondent No.3 who is the son of one Kalnu for injunction simplicitor. It is the case of the plaintiffs that by virtue

of sale-deeds dated 30/01/1975 and 24/06/1975 the suit fields were purchased from the father of the said defendant-Kalnu. Since the defendant was causing obstruction to the plaintiffs' possession suit for injunction simplicitor was filed. In that suit application below Exhibit-65 came to be filed by members of the family of Kalnu. The applicants claimed that the common ancestor Vithoba had a son by name Kalnu and three daughters. The applicants claim to be the legal heirs of one of the said daughters. On the premise that the suit property was ancestral property they sought to be impleaded in the suit as defendants. Another application below Exhibit-58 came to be filed in the same suit by one of the sisters of Kalnu. The trial Court rejected both the applications on the count that the suit was for injunction simplicitor and the parties who sought to be so added were neither necessary parties nor proper parties.

3. Shri V. B. Bhise and Shri R. D. Dhande, learned counsel for the respective petitioners submitted that in the light of the fact that the suit property was joint family property and the sale-deeds executed by Kalnu did not empower him to alienate the suit property, the other legal heirs of Vithoba ought to have been added as parties in the suit for injunction as filed. Placing reliance on the decision in *Digambar s/o Gangaram Halde (Patil) vs. Sayyad Khaja s/o Sayyad Mohiyoddin and ors.* 2018(5) *Mh.L.J.* 653 it was submitted that with a view to avoid multiplicity of proceedings such addition ought to have been permitted. Moreover, since the vendor Kalnu had been subsequently added as a defendant there was no reason to refuse permission to the applicants herein to be added as parties.

4. On the other hand Shri U. J. Deshpande and Shri S. A. Mohta, learned counsel for the plaintiffs opposed the aforesaid submissions. It was pointed out that one of the legal heirs of Vithoba had filed a suit for partition and separate possession and the properties purchased by the plaintiffs were also the subject matter of that suit. No relief as sought against the petitioners herein and as the suit was for injunction simplicitor, the plaintiffs could not be compelled to add those parties. Reliance was placed on the decision in *Amit Kumar Shaw and anr. vs. Farida Khatoon and anr. (2005) 11 SCC 403*.

5. After hearing the learned counsel and perusing the pleadings on record it is seen that the suit as filed is for injunction simplicitor. The relief of injunction has been sought only against the defendants as impleaded. The subsequent addition of Kalnu can be justified on the count that he is the plaintiffs' vendor and thus has been added as a defendant. In the light of the fact that a separate suit for partition and separate possession has been filed and the rights of the petitioners can be adjudicated in that suit, the trial Court was justified in refusing to permit the petitioners to being impleaded as defendants. Hence I do not find any reason to interfere in writ jurisdiction.

In view of aforesaid both the writ petitions are dismissed with no order as to costs.

JUDGE