

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5835 OF 2020

Tulshidas s/o Laxman Wagh,
Age : 64 years, Occu. Agri.,
R/o Karjunekhare, Tq. Nagar,
District Ahmednagar,
through his General Power of Attorney
Bhausahab s/o Tulshidas Wagh,
Age : 32 years, Occu. Agri.,
R/o Railway Station, Shingnapur,
Tq. Kopergaon, Dist. Ahmednagar

PETITIONER
(Orig. Plaintiff)

VERSUS

1. The State of Maharashtra,
through District Collector,
Ahmednagar, Dist. Ahmednagar
2. The Tahsildar,
Nagar Taluka, Ahmednagar
3. Parubai w/o Madhav Wagh,
Age : 75 years, Occu. Household,
R/o Karjunekhare, Tq. Nagar,
District Ahmednagar
4. Subhash s/o Madhav Wagh,
Age : 57 years, Occu. Agri.,
R/o Shingnapur, Tq. Kopergaon,
District Ahmednagar
5. Dnyandev s/o Madhav Wagh,
Age : 47 years, Occu. Agri. & Service,
R/o Karjunekhare, Tq. Nagar,
District Ahmednagar
6. Swami Baban Wagh,
Age : 25 years, Occu. Education
7. Ganesh s/o Baban Wagh,
Age : 27 years, Occu. Education

8. Smt. Nandabai Wd/o Baban Wagh,
Age : 47 years, Occu. Household
9. Renuka d/o Baban Wagh,
Age : 29 years, Occu. Household

Respondent Nos.6 to 9 are R/o
Opposite M.S. Quarters,
Near Fort, Bhingar, Taluka and
District Ahmednagar

**RESPONDENTS
(Orig. Defendants)**

Mr. Abasaheb D. Shinde, Advocate for the petitioners
Mr. S.N. Morampalle, A.G.P. for respondent Nos.1 and 2
Mr. A.V. Hon, Advocate for respondent Nos.3 to 9

CORAM : MANGESH S. PATIL, J.

DATE : 03.12.2020

ORAL JUDGMENT :

Heard.

2. Rule. The Rule is made returnable forthwith. Learned A.G.P. waives service for respondent Nos.1 and 2 and learned Advocate Mr. A.V. Hon waives service for respondent Nos.3 to 9. At the request of learned Advocates for the parties and learned A.G.P., the matter is heard finally at the stage of admission.

3. The petitioner is the original plaintiff, who approaches this Court being aggrieved and dissatisfied by the order dated 05.03.2020 passed by the Joint Civil Judge, Senior Division, Kopergaon whereby his application (Exh-122) in Regular Civil Suit No.69 of 2019, seeking addition of parties as defendants, has been rejected.

4. Mr. A.D. Shinde, learned Advocate for the petitioner submits that considering the nature of the dispute, a specific issue regarding non-joinder of necessary parties has been framed. The petitioner inter alia seeks a declaration about the tenancy proceeding terminated by issuing a certificate under Section 32M of the Maharashtra Tenancy and Agricultural Lands Act is void ab initio. He is seeking a declaration to the effect that the Settlement Deed dated 24.02.1967 executed by one Limbaji Ganpat Wagh and Madhav Govind Wagh in favour of Godhabai Laxman Wagh as well as the Deed of Rectification executed by them are not binding on him and are illegal. The parties sought to be added are the legal representatives of these persons – Limbaji and Madhav. Obviously, they are the best persons to defend the suit, particularly the latter two prayers. The plaintiff being a dominus litis should have been allowed to add the parties. The learned Civil Judge has taken a hyper technical view and has laboured to point out as to how these persons are not necessary parties albeit he refers to the issue framed regarding non-joinder of necessary parties. He submits that the impugned order being grossly erroneous be quashed and set aside and the application (Exh-122) be allowed.

5. The learned A.G.P opposes the petition.

6. Mr. A.V. Hon, learned Advocate for respondent Nos.3 to 9, who are defendant Nos.3 to 9 in the Suit, submits that there is no illegality

committed by the learned Civil Judge in refusing to allow the application (Exh-122) for variety of reasons. He submits that the application was filed belatedly, as an afterthought just to prolong the matter being disposed of finally. He would submit that since inception, the petitioner was aware regarding objection on the ground of non-joinder of necessary parties. The issue was framed to that effect in the year 2016. But he has chosen to file this application in the year 2020 after he chose to close the evidence and the respondents/defendants had entered into the box. He, therefore, submits that there is no error in the impugned order in rejecting the application even on the ground of laches.

7. It is trite that the plaintiff is considered to be a dominus litis. He is the best person to judge as to who should be added as parties considering the nature of reliefs being claimed by him.

8. As can be seen, the petitioner is seeking a declaration that the Settlement Deed executed by Limbaji and Madhav in favour of Godhabai and subsequent Deed of Rectification are illegal and void and not binding on him. As can be seen, the parties sought to be added are none other than the legal representatives of these two persons – Limbaji and Madhav. Obviously, therefore, considering the declaratory reliefs claimed by the petitioner, the persons sought to be added would be the best persons to be added in the suit and are necessary parties.

9. Once it is prima facie found that the persons sought to be added are necessary parties, the question of delay would take a back seat. The petitioner is not to gain anything by either seeking to add parties or by protracting the litigation.

10. However, it is pertinent to note that the question of limitation as far as the parties sought to be added may crop up and needs to be kept open for being agitated by them.

11. The learned Civil Judge has not at all considered all the above mentioned facts and circumstances in the proper perspective and has taken a pedantic view. The procedure is hand maid of justice. The learned Civil Judge having framed a specific issue regarding non-joinder of necessary parties, should have allowed the application (Exh-122). The impugned order is palpably illegal and is liable to be quashed and set aside.

12. The Writ Petition is allowed. The impugned order is quashed and set aside. The application (Exhibit-122) filed by the petitioner stands allowed as prayed for, however, keeping open the point of limitation qua the parties to be added. The Rule is made absolute accordingly.

13. The parties to act on the copy of this judgment and order duly authenticated by the Court Shirestedar.

[MANGESH S. PATIL]
JUDGE

