

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

933 WRIT PETITION NO.7713 OF 2015

1. Nizam Faiyyaz Hakim,
Died through his L.Rs.
- 1A] Fayyaz Ahemad Hakim,
Age : 30 years, Occu. Business,
R/o. Supa, Taluka Parner,
District Ahmednagar. ... **Petitioner.**

Versus

1. Dattatraya Shankar Kadam,
Age : 36 years, Occu. Business,
2. Vijay Shankar Kadam,
Age : 34 years, Occu. Business.
3. Bebi Shankar Kadam,
Age : 60 years, Occu. Household.
4. Ashabai Vithal Mhaske,
Age : 40 years, Occu. Household.

Respondent Nos.1 to 4
R/o. Kamargaon, Taluka and
District Ahmednagar.

5. The State of Maharashtra,
Through its Collector,
Ahmednagar.
6. Meenabai Shankar Kadam,
Age : 62 years, Occu. Household.
7. Balu Shankar Kadam,
Age : 45 years, Occu. Agril.

8. Raju Shankar Kadam,
Age : 30 years, Occu. Agril. / Driver.

Respondent Nos.6 to 8
R/o. Narayan Dohar, Taluka Nagar,
District Ahmednagar.

9. Meena Kashinath Deokar,
Age : 32 years, Occu. Household,
R/o. Chas, Taluka and
District Ahmednagar.

10. Pramila Dnyaneshwar Mate,
Age 26 years, Occu. Household,
R/o Dongargan, Taluka and
District Ahmednagar.

... **Respondents.**

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Advocate for Petitioner : Mr. Amol S. Sawant
AGP for Respondent No.5-State : Mr. A.M. Phule
Adv. for Respondent Nos.1 to 4 & 6 to 10 : Mr. N.B. Narwade

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CORAM : V. K. JADHAV, J.

DATE : 26.02.2020

ORAL JUDGMENT :-

1. Heard finally at admission stage by consent. Rule. Rule made returnable forthwith.

2. The respondents-plaintiffs had instituted the suit bearing Special Civil Suit No.98 of 2007 for declaration and perpetual injunction in respect of the suit property. The petitioner-defendant has strongly resisted the suit by filing the written statement. After hearing the suit, the Trial Court by judgment

and decree dated 31.01.2009, dismissed the suit. Being aggrieved by the same, the respondents-plaintiffs have preferred the appeal bearing Regular Civil Appeal No.439 of 2012. Pending appeal, the respondents-plaintiffs have filed an application Exh.7 in the said appeal under Order 6 Rule 17 of the Civil Procedure Code. It has been contended in the said application that the suit property has been mutated in the name of the Government and therefore Government is necessary party so also the second wife of the deceased Shankar Kadam. The learned Adhoc District Judge-3, Ahmednagar by impugned order passed below Exh.7 in Regular Civil Appeal No.439 of 2012 allowed the said application subject to costs of Rs.1,000/- (Rupees One Thousand only). Hence, this Writ Petition.

3. The learned counsel for the petitioner submits that the suit pertains to the surplus land under the provisions of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 allotted to the respondents-plaintiffs and it has been alleged that the petitioner-defendant fraudulently got executed the sale deed in respect of the aforesaid land. It has also been contended that the suit land remained in possession of the

respondents-plaintiffs, however on the strength of the sale deed, the petitioner-defendant is disturbing his lawful possession over the suit land. The learned counsel submits that the dispute is between the parties pertaining to the sale transaction in respect of the suit land and as such neither the Government is a necessary party nor the proper party to the suit. The learned counsel submits that even the impugned order is a premature order. The Trial Court has dismissed the suit by recording the findings in the negative to various issues and also recorded the findings in the affirmative to the issue about non-joinder of the necessary parties. It is for the Appellate court to find out whether the Government is a necessary or proper party while disposing of the appeal, however, the impugned order is premature one.

4. The learned counsel for the respondents-plaintiffs submits that there is a specific pleading to the effect that on 14.10.2005 under the orders of the Tahsildar, the suit land came to be mutated in the name of the Government by mutation entry No.3007. The respondents-plaintiffs are still in possession of the suit land. In view of the same, the Government is a necessary and proper party so also the second

wife of the deceased Shankar Kadam, who is also the legal heir and necessary to be impleaded in the suit. The learned counsel submits that though by order dated 17.10.2013 the Single Judge of this Court in Writ Petition No.1996 of 2013 quashed and set aside the orders passed by the Tahsildar and subsequent orders passed in appeal and revision pertaining to the suit land. However, in the given set of facts the Government is the necessary party and the Lower Appellate Court has correctly passed the order. No interference is required.

5. On careful perusal of the contents of Exh.7 and the impugned order passed thereon and so also the judgment and decree passed by the Trial Court, it appears that the order passed by the Appellate Court is premature. The Trial Court has recorded the findings in the affirmative about the non-joinder of the necessary parties. In view of the same, it is for the Appellate Court to decide as to whether the Government is the necessary party or not. It appears that the dispute pertains to the sale transaction in respect of the suit land. Even assuming that under the orders of the Tahsildar, the suit land came to be mutated in the name of Government, however, in

view of the order dated 17.10.2013 passed by the Single Judge of this Court in Writ Petition No.1996 of 2013, the orders passed by the Tahsildar pertaining to the suit land and subsequent orders passed in appeal and revision are quashed and set aside. Though this fact was brought to the notice of the Appellate court in application Exh.7, the First Appellate Court has not given thought to it. In view of the same, the impugned order is not sustainable. However, the Appellate Court, while disposing of the appeal, may consider the same in the light of the submissions made in this behalf by the respective parties. Hence, I proceed to pass the following order :

ORDER

- (i) Writ Petition is hereby allowed.
- (ii) The impugned order below Exh.7 in Regular Civil Appeal No.439 of 2012 is hereby quashed and set aside.
- (iii) Writ Petition is accordingly disposed off.
- (iv) Rule made absolute in the above terms.

(V. K. JADHAV, J.)

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vmk/-