

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

12. WRIT PETITION NO. 1390 OF 2020

Gangadhar S/o Antaram Depe and others

...Petitioners

VERSUS

Sambhaji @ Prabhakar @ Prabhu Antaram Depe
and others

...Respondents

Mr. Milind Patil, Advocate for petitioners

CORAM : ROHIT B. DEO, J.

DATE : 29th January, 2020

PER COURT :

1. The petitioners are plaintiffs in Special Civil Suit No. 9 of 2017 brought for declaration of ownership and injunction.
2. The parties shall be referred to by their status in the suit.
3. The plaintiffs are aggrieved by two orders passed by the Trial Court. The first order dated 24th September 2019 is of allowing application preferred by respondents No. 7, 8 & 9 in this petition for impleadment as defendants No. 7 to 9. The second order is of framing additional issues.
4. The impleaded defendants are the wife and children of

defendant No.6, who is brother of plaintiff No.1. The submission of the learned Counsel is that defendant No.6 has admitted that there was partition in the year 1993 and that as a fact defendant No.6 had claimed share in the land acquisition compensation amount on the premise of 1993 partition. The learned Counsel would submit that the wife and children of defendant No.6 cannot be permitted to be joined as parties, firstly, as the effect of admission is being obliterated and, secondly, because the nature of the suit will change. The learned Counsel would submit that wife and children of defendant No.6 ought to be relegated to the remedy of filing substantive suit.

5. It is difficult to agree with the submission of the learned Counsel. According to the wife and children of defendant No.6, the suit property is the joint family property and there is no partition. Whether there is a partition in 1993 or not, would be ultimately decided by the Trial Court. However, son of defendant No.6, who is claiming to be a co-parcener in his own right, cannot be kept out of the litigation on the premise that he is bound by the purported admission of his father. Be it noted, the wife and children of defendant No.6 have contended that defendant No.6 was addicted to various vices, like liquor and gambling and was not in a position to

protect the interest of the family. I do not, therefore, find any error in the order of the Trial Court, which permits the wife and children of defendant No.6 to join the suit as defendants No. 7 to 9.

6. The second order of framing additional issues is consequential to the stand of the children of defendant No.6. All that is done by framing additional issues is the burden to prove that defendant No.6 is an addict, etc., is placed on defendants No. 7 to 9. The additional issues do not cast any burden whatsoever on the plaintiffs.

7. In this view of the matter, I do not see any reason to interfere in writ jurisdiction.

8. In view of the submission that the only intent on behalf of the wife and children of defendant No.6 is to delay adjudication, the Trial Court is requested to decide the suit as expeditiously as possible.

(ROHIT B. DEO)
JUDGE

Madkar