

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.1436 OF 2021
IN SA/282/1999

BHAGCHAND S/O SOBHAGCHAND BALAI
VERSUS
VEDPRAKASH S/O MARUTI HARKAR (DIED) THR. LRS. ALKABAI
(DIED) LRS DEEPAK VEDPRAKASH HARKAR AND OTHERS

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Mr. S. V. Chandole, Advocate for the applicant.
Mr. D. N. Suryawanshi and P. D. Suryawanshi, Advocate for respondent
Nos.1B to 1F, 3, 4a to 4c and 5a to 5d.
Mr. M. S. Deshmukh, Advocate for respondent No.6.
Mr. D. G. Nagode, Advocate for respondent No.8.
Mr. A. M. Phule, AGP for respondent Nos.9 to 11.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 22.11.2021

ORDER :-

. Present application has been filed by a third party to get himself added as respondent to the second appeal.

2. Heard both sides. In order to cut short, it can be said that they have made submissions in support of their respective contentions.

3. The applicant contends that the original plaintiffs, who are the respondent Nos.6 to 8 in the second appeal, had no source of income and, therefore, had entered into agreement with him in the year 1977

for expenditure of the litigation and agreed to give 1/4th land as well as 1/4th share in compensation in respect of acquired land. It is stated that the applicant is still fighting for the litigation on behalf of respondent Nos.6 to 8. They had written letters to the applicant so many times informing him regarding the stage of litigation and for making arrangement for the expenditure. Thereafter, they had also executed Special Power of Attorney in his favour. But now, it appears that they have entered into compromise and want to avoid the applicant. They have also sold some share to third party. The applicant is an interested person in property and compensation and, therefore, he deserves to be added as respondent.

4. The application has been opposed by the respondents.

5. At the outset, it can be seen that the suit i.e. Regular Civil Suit No.243 of 1980 would have been filed somewhere in the year 1980 as the date of filing of suit is not appearing in the record, which is available before this Court. If any such agreement as stated by the applicant was entered in the year 1977, then there was no hurdle for the applicant to get himself added as party to the suit itself. The suit was decided on 08.01.1987. The appeal preferred by defendant Nos.4 to 8 i.e. Regular Civil Appeal No.123 of 1987 and the appeal filed by original plaintiffs

i.e. Regular Civil Appeal No.154 of 1987 was decided by the common judgment by the first Appellate Court on 12.02.1998. Even at the first appellate stage, there was no attempt by him to get himself added as party to the proceedings. According to him, i.e. from the contents of the present application, it can be gathered that he was having every knowledge about what is happening in the litigation. Merely because there was some agreement between the plaintiffs and the applicant and he would have helped financially, that does not get him a vested right in the property. If at all there is an agreement which he can specifically enforce against the plaintiffs, he would be at liberty if the law permits. However, he cannot be said to be a necessary party much less proper party, who can be added under Order I, Rule 10 of the Code of Civil Procedure. Now, when the matter is compromised, it appears that he is feeling aggrieved. He cannot be added as party at any cost because his interest is different from the interest and rights of the party involved in the litigation in second appeal. Under such circumstance, there is no merit in the application. It deserves to be rejected. Accordingly, it is rejected and the compromise is recorded separately.

[SMT. VIBHA KANKANWADI, J.]