

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

924 WRIT PETITION NO.6116 OF 2021

**KUSUM SAKHARAM KALE AND OTHERS
VERSUS
NAGNATH JANARDHAN KADAM AND OTHERS**

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Advocate for Petitioners : Mr. Vivek Bhavthankar

CORAM : MANGESH S. PATIL, J.

DATE : 12.10.2021.

PER COURT :

Heard learned advocate Mr. Bhavthankar for the petitioners.

2. Exception is being taken by the petitioners to the order passed by the learned Civil Judge on their application (Exh. 17) in Regular Civil Suit No. 155/2013 filed by the respondent Nos. 1 and 2 herein, against the respondent Nos. 3 to 6 for declaration that they are the exclusive owners of the land Gat No. 184, admeasuring 2 Acres of village Dharasur and perpetual injunction restraining the respondent No. 3 from obstructing his possession and getting the land mutated in his name.

3. The petitioners being the near relatives of the parties to the suit namely the respondent Nos. 1 to 3 herein, submitted the application under Order I Rule 10 of the Code of Civil Procedure for their impleadment in the array of the defendants. The learned Civil Judge by the order which is impugned in this Writ Petition, has rejected the application. Hence this Writ Petition.

4. The learned advocate submits that the respondent Nos. 1 and 2 have filed the suit claiming their exclusive ownership over a piece of land which according to these petitioners is a joint family property. Since they are also

having interest in the suit property they deserve to be impleaded. He would also point out the genealogy to demonstrate that the petitioner No. 1 is the sister of the respondent No. 3 who is the defendant No. 1 in the suit. Whereas, the rest of the petitioners are the issues of the two daughters Rukminbai and Kusumbai of respondent No. 3 Pandurang. Whereas, the respondent Nos. 1 and 2 who are the original plaintiffs are the son and wife of Pandurang's brother Janardhan.

5. I have carefully considered the submissions and perused the plaint in the suit filed by the respondent Nos. 1 and 2. As can be seen, though the respondent Nos. 1 and 2 are asserting their exclusive title to the suit property, they are alleging that false and bogus mutation entry has been effected referring to a relinquishment deed allegedly executed by the respondent No. 1. Since the respondent No. 3 has been asserting his right and title to the suit property on the basis of such relinquishment deed the suit has been filed with the reliefs as mentioned herein above.

6. Assuming for the sake of arguments that the suit property is the joint family property as is being asserted by the petitioners, still, for them the remedy would lie independently by a separate suit asserting their own claim, may be for partition and separate possession. As the suit now stands it is not a suit for partition. As is mentioned herein above, since the respondent No. 3 is asserting right in the suit property on the basis of some relinquishment deed, the genuineness of which is being disputed by the respondent Nos. 1 and 2, it is a matter which is in dispute between them inter se and the petitioners have no concern with that.

7. Going by the averments in the plaint and the contentions in the written statement coupled with the prayers/reliefs claimed by the respondent Nos. 1 and 2, the suit can be decreed even in the absence of the petitioners and if that be so, they cannot be said to be necessary parties to the suit. Needless to state that the petitioners would have their own

remedies under the law but cannot seek to intervene in the suit filed by the respondent Nos. 1 and 2 which in all probability vex the issue.

8. The Writ Petition is dismissed in *limine*.

(MANGESH S. PATIL, J.)

mkd/-