

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

WRIT PETITION NO. 12830 OF 2021

- 1) Adikabai Narayan Mande,
Age 62 years, Occ. Agriculture.
 - 2) Shri. Ramesh s/o Narayan Mande,
Age 42 years, Occ. Agriculture.
 - 3) Anil s/o Narayan Mande,
Age 40 years, Occ. Agriculture.
 - 4) Reshma w/o Anil Mande,
Age 36 years, Occ. Agriculture.
All r/o. Madhewadgaon, Tq.
Shrigonda, Dist. Ahmednagar.
- ... **Petitioners.**

VERSUS.

- 1) The State of Maharashtra,
Through District Collector, Ahmednagar,
Collector Office, Ahmednagar.
- 2) The Tahsildar, Shrigonda,
Tq. Shrigonda, Dist.Ahmednagar.
- 3) Shri. Shankar s/o Sopan Mande,
Age 65 years, Occ. Agriculture.
- 4) Shri. Nilkanth Khanderao Wabale,
Age 60 years, Occ. Agriculture.
- 5) Shri. Sanjay s/o Trimbak Mande,
Age 50 years, Occ. Agriculture.
- 6) Sow. Shalan w/o Sanjay Mande,
Age 45 years, Occ. Agriculture.
- 7) Sow. Anita w/o Santosh Mande,
Age 33 years, Occ. Agriculture.
- 8) Sow. Vanamala w/o Abasaheb Mande,
Age 40 years, Occ. Agriculture.

Respondent Nos. 3, 5 to 8 are
R/o. Madhewadgaon Tq. Shrigonda,
Dist. Ahmednagar.

Respondent No. 4 r/o. Mahatarpimpri,
Tq. Shrigonda, Dist. Ahmednagar.

... **Respondents.**

...

Advocate for the Petitioners: Mr. Rode Dilip B.
A.G.P. for the Respondents No. 1 & 2/State : Mr. Y. G. Gujrathi..
Advocate for the Respondent No. 3 & 5 : Mr. Rahul A. Tambe.

CORAM : **MANGESH S. PATIL, J.**

DATE : **30.11.2021.**

ORAL JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. Learned advocate Mr. Tambe waives service for the respondent Nos. 3 and 5 who have filed a caveat. Learned A.G.P. waives service for the respondent Nos. 1 and 2. At the request of the parties the matter is heard finally.

2. The petitioners are the original plaintiffs who are aggrieved and dissatisfied by the rejection of their application (Exh. 39) seeking amendment of the plaint under Order VI Rule 17 of the Code of Civil Procedure.

3. Originally it is only the petitioner Nos. 1 and 2 who filed the suit seeking a declaration that order passed by the Tahsildar in the Rasta Case No. 16/2016 dated 05.12.2018 under Section 5(2) of the Mamlatdars' Courts Act be declared as null and void and not binding on them. They also claimed perpetual injunction restraining the respondent Nos. 3 to 8 herein from obstructing their possession in the suit property.

4. It appears that by moving an application (Exh. 33) under Order I Rule 10 of the Code of Civil Procedure the petitioner Nos. 3 and 4 were allowed to be impleaded in the array of the plaintiffs by the order dated 07.09.2021.

5. Soon after passing of such order, the present application for amendment was filed on 10.09.2021 seeking to add three paragraphs in the plaint and to amend the prayer clause. They sought to add that a partition had taken place amongst the petitioners on 06.10.2020 in respect of the suit properties land Gat No. 523 and 527 and a mutation entry No. 5266 has been certified on 23.12.2020. It is sought to be added that all the petitioners are members of the same family and the partition has been effected only by way of a family arrangement.

6. By adding one more paragraph it is being sought to be pleaded that the respondent Nos. 3 to 8 tried to forcibly create a new way through the suit property on 05.01.2021 and by adding the third paragraph it is sought to be added that the order passed by the Tahsildar is illegal and ultra virus.

7. The respondent Nos. 3 and 5 opposed that application on various grounds and by the impugned order the application has been rejected.

8. As can be appreciated, the petitioner Nos. 1 and 2 alone had instituted the suit on 09.12.2017 seeking to challenge the decision of the Tahsildar under Section 5(2) of the Mamlatdars' Courts Act dated 05.12.2018. It is they who were the only parties to that matter and not the petitioner Nos. 3 and 4. Assuming for the sake of arguments that they all belong to the same

family, the fact remains that the latter two were not parties before the Tahsildar who had passed the order which is sought to be challenged in this suit.

9. With a spacious plea that subsequently, in view of some family arrangement mutation entry No. 5266 has been got certified that the petitioner Nos. 3 and 4 were allowed to be impleaded by the order on a separate application of the petitioners (Exh. 33). Conspicuously, that application (Exh. 33) is as vague as it could be. It only reads that they are necessary to be added in the array of the plaintiffs and no prejudice was likely to be caused to the respondents/defendants. True it is that this application was not strongly opposed by the respondent Nos. 3 to 8 and even the order passed thereon allowing them to be impleaded as plaintiff Nos. 3 and 4 has never been challenged.

10. But then, it is to be borne in mind that the petitioner Nos. 3 and 4 are coming into picture only pursuant to some supervening events whereby there has been some sort of family arrangement amongst the petitioners, witnessed by mutation entry No. 5266. If at all they have some right and interest in the property in respect of which the impugned order is passed by Tahsildar, the petitioner Nos. 3 and 4 would have their own remedy under the law. This proceeding under Section 5(2) of the Mamlatdars' Courts Act was initiated way back in the year 2017 and reached finality by the order dated 05.12.2018. It is thereafter that the so called family arrangement has

been arrived at. Meaning thereby that as far as challenge to the decision of Tahsildar is concerned, the petitioner Nos. 3 and 4 being not the parties to that proceeding cannot be said to have any right or role so far as the declaration being claimed in the suit is concerned.

11. So far as the alleged obstruction is concerned, by virtue of the proposed amendment, the alleged obstruction post filing of the suit is sought to be brought on record. Needless to state that such amendment would not relate back to the filing of the suit and indeed cannot. As is clear the challenge in the plaint is to the legality of the decision rendered by Tahsildar in a proceeding under Section 5(2) of the Act.

12. If such is the state of affairs, one can easily comprehend that issues which are necessary to be decided in the suit would get vexed by the proposed amendment. The view taken by the learned Judge on these lines while passing the impugned order by no stretch of imagination can be said to be either perverse, arbitrary or capricious so that this Court can interfere in exercise of writ jurisdiction.

13. The Writ Petition is dismissed in limine.

14. The Rule is discharged.

(MANGESH S. PATIL, J.)

mkd/-