

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7565 OF 2012

Mr. Shivram Kondaji Khalkar & Ors.	 Petitioners
vs.	
Mr. Jagannath Baburao Khalkar & Ors.	 Respondents

Mr. Roshan S. Tanna, for the Petitioners.	
None appeared for Respondents.	

CORAM : MADHAV J. JAMDAR, J.

DATE : 10th AUGUST, 2021

P.C. :

. The petitioner, who is original plaintiff No.2 has challenged the Order dated 30th June 2012 passed by the learned Civil Judge, Junior Division, Nasikroad, Nasik by which application bearing Exh.18 filed in Regular Civil Suit No.222 of 2012 was allowed. The said application was filed by third party-Tanhubai Shivram Khalkar @ Tanhubai Laxman Khole i.e. present respondent No.29. By the said application, respondent No.29 sought her impleadment as party to the said suit.

2. Mr. Roshan Tanna, learned Counsel appearing for the petitioner submitted that the said Regular Civil Suit No.222 of 2012 is filed simplicitor for injunction and, therefore, respondent No.29 is neither necessary party nor proper party. He submitted that therefore, the

impugned order is required to be quashed and set aside.

3. The said Regular Civil Suit No.222 of 2012 was filed by Deceased Shivram Kondaji Khalkar (plaintiff No.1) and Shri Rajendra Shivram Khalkar (plaintiff No.2) seeking injunction. The plaintiff No.2 claims to be the adopted son of the plaintiff No.1. Admittedly, respondent No.29 is daughter of deceased plaintiff No.1 and one of the legal heirs and representatives of deceased petitioner No.1, i.e. plaintiff No.1-Shivram Kondaji Khalkar. The suit is for injunction filed by both the plaintiffs. Petitioner No.1, i.e. plaintiff No.1 expired during pendency of this writ petition. Admittedly, suit property was the absolute property of deceased Mr. Shivram Kondaji Khalkar. Respondent No.29 is daughter of deceased-plaintiff No.1.

4. The trial Court has found that although respondent No.29 may not be a necessary party but a proper party. The learned trial Court has exercised the discretion under Order 1, Rule 10(2) of C.P.C. The said discretion is properly exercised. Therefore, this is not a case where the impugned order is required to be interfered under the discretionary jurisdiction of this Court under Article 227 of the Constitution of India. Therefore, writ petition is rejected with no order as to costs.

(MADHAV J. JAMDAR, J.)