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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

WRIT PETITION NO.4458 OF 2017

Waman s/o Baburao Khente, Aged
about 61 years, occupation : agriculturist,
R/o at Tarkhed Musalman, Post
Kavhala, taluka Chikhli, district Buldhana. **Petitioner.**

:: V E R S U S ::

1. Smt.Mona @ Seema Parveen
Bashir Patel, aged about 70 years,
occupation : household.

2. Rafique Patel Bashir Patel, aged
about 50 years, occupation : labour,

3. Nazadat @ Wajahad Patel Bashir
Patel, aged about 35 years, occupation:
labour.

4. Mubasshir Bashir Patel, Aged about
25 years, occupation : labour.

5. Nusrat @ Nusrat Bee Bashir Patel,
Aged about 40 years, occupation : household.

6. Ishrat Parveen Bashir Patel, aged
about 28 years, occupation : labour,

7. Sk.Mansoor Manna Patel, aged
about 74 years, occupation : labour.

8. Mohd.Jamil Manna Patel, aged
about 64 years, occupation : labour.

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9. Ab.Rafique Manna Patel, aged about 55 years, occupation : labour.

10. Rumshan Bee w/o Rajdarkha, aged about 67 years, occupation household.

Respondent No.1 to 10 are resident of village Amdapur, taluka Chikhli, district Buldhana.

11. Anisa Begum w/o Sk.Mirza, aged about 63 years, occupation : household, R/o Asola, taluka Chikhli, district Buldhana.

12. Mohd. Shakil Patel Manna Patel, Aged about 60 years, occupation: agriculturist, r/o Amdapur, taluka Chikhli, district Buldhana.

..... Respondents.

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Shri T.S.Deshpande, Counsel for the petitioner.
None for respondents.

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CORAM : VM.DESHPANDE, J.
DATE : FEBRUARY 02, 2021

ORAL JUDGMENT

1. On 13.7.2017, in this writ petition notices of final disposal were issued to respondents and at the time of issuing notices this Court stayed effect and operation of order dated

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3.5.2017 passed by learned Joint Civil Judge Junior Division, Chikhli, district Buldhana in RCS No.88/2016 which is challenged in this writ petition.

2. Farad order shows that this writ petition is dismissed against respondent Nos.2,7,9, and 10. Whereas, respondent Nos.1,3,6,8,11, and 12 are duly served. Though there are 12 respondents in this writ petition, contesting respondent is only respondent No.12 who is served with notice of final disposal and in spite of the service of notice in the year 2019 he is not appearing either in person or through his advocate before this Court.

3. Heard learned counsel Shri T.S.Deshpande for the petitioner. **Rule.** Rule is made returnable forthwith.

4. The petitioner is original plaintiff. He filed a suit for decree of perpetual injunction against respondent Nos.1 to 11 with following prayers:

“1) pass a decree of Perpetual Injunction in favour of plaintiff and against defendants, wrongdoers, their agents, relations, associates,

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accordingly all of them be restrained permanently from attempting to indulge in unlawful, illegal activities and further from creating disturbances in the smooth cultivating possession and enjoyment of plaintiff and for getting plaintiff forcibly ousted from over suit property, that too, without taking legal recourse, if any.

2) grant any other just and suitable relief including costs of this suit, which this Hon'ble Court deems, in the interest of justice."

In the suit, the defendants appeared and contested claim of the petitioner/plaintiff. Initially, respondent No.12 in this writ petition filed an application (Exhibit 32) in the said suit for impleading him as intervenor. The said application was rejected by learned Joint Civil Judge Junior Division, Chikhli on 26.9.2016. According to learned counsel Shri T.S.Deshpande for the petitioner/plaintiff, respondent No.12 did not challenge the said order.

5. Thereafter, respondent No.12 filed application under Order 1 Rule 10 sub rule 2 for joining him as defendant in the suit. The said application is at Exhibit 48. The application was opposed

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by the petitioner/plaintiff. Vide order dated 3.5.2017 impugned in this petition, learned Joint Civil Judge Junior Division, Chikhli allowed the said application. Against the said, the present petition is filed.

6. Contention of learned counsel for the petitioner is that presence of respondent No.12, in respect of dispute between him and original defendants, is not necessary.

7. Learned Judge of the Court below allowed the application filed on behalf of respondent No.12 because, according to learned Judge below, presence of respondent No.12 is necessary in view of finding his name in 7/12 extract of gat no.729 as possessor. Learned counsel for the petitioner, invited my attention to reported judgment of this Court at Aurangabad bench in the case of Ramesh s/o Shama Kumbhar and anr vs. Sudhakar s/o Budha Kumbhar and ors, reported at 2013(3) ALL MR 196 to submit that the writ petition needs to be allowed by quashing the order.

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8. This Court in the case cited *supra* observed that any order passed of injunction would bind only the parties to the suit. The proposed party who is not party to the suit would not be bound by the order in the suit. The petitioner being the plaintiff is *dominus litis* of his case. Prayer clauses, which are reproduced herein above, show that the suit was not for declaration but it was for only injunction. The petitioner/plaintiff is taking risk of not joining respondent No.12 as defendant though is in possession as per revenue record.

9. In this view of the matter, even if the suit of the petitioner/plaintiff is decreed and decree of injunction is granted, that will not be binding on respondent No.12. Hence, I pass following order:-

ORDER

(1) The writ petition is allowed.

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(2) Order dated 3.5.2017 passed by learned Joint Civil Judge Junior Division, Chikhli, district Buldhana below Exhibit-48 in RCS No.88/2016 is hereby quashed and set aside.

(3) It is made clear that in case RCS No.88/2016 is decreed in favour of the petitioner/plaintiff, the said order of injunction shall not be binding on respondent No.12 herein.

JUDGE

!! BRW !!

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