

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 3407 OF 2020

Vishwas Tulshiram Mapari and others Vs. Prabhakar Vasudev Tikar and Ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri Ram Karode, Advocate for petitioners.

CORAM : V.M. DESHPANDE, J.

DATE : JANUARY 15, 2021.

Heard Shri Ram Karode, learned counsel for the petitioners.

(2) Heard Shri Ram Karode, learned counsel for the petitioners.

(3) The petitioners filed an application under Order I Rule 10 read with Section 151 of Code of Civil Procedure in Regular Civil Suit No. 84 of 2009 that stands rejected by learned 4th Joint Civil Judge Junior Division, Khamgaon on 21.03.2020. Against said order the present writ petition is preferred.

(4) After hearing the learned counsel for the petitioner and after having gone through the documents filed on record, this Court is of the view that this writ petition is devoid of any substance and is required to be dismissed.

(5) The petitioners filed the application under Order I Rule 10 of the C.P.C. in the suit because the liberty

was given to the petitioners to file such application in Writ Petition No.2243 of 2018, which was filed by one Ganesh Choukase. In paragraph No.9 of order in Writ Petition No.2243 of 2018 this Court (Coram: Ravindra V. Ghuge, J.) has observed as under :

“9. The trial Court shall proceed to decide Regular Civil Suit No.84/2009, as expeditiously as possible and in any case, on or before 31.7.2020. Liberty is granted to respondent Nos.4 to 6 herein to move an application for being added, either as plaintiffs or as defendants and the said application shall be considered by the trial Court on its own merits. All contentions of the litigating parties in the suit are kept open. The trial Court shall note that it would be at liberty to refuse adjournment to any litigating side if such adjournment is based on unreasonable ground.”

(6) In view of the said, the application was moved before the trial Court under Order I Rule 10 seeking order from the Court that the petitioner be added as party in the suit. Plaintiff – Prabhakar in the said suit opposed the application by filing reply to the application. The reply filed by Prabhakar would show that he claimed easementary right of way over the land in question as well as over the land within the Gat No. 179 belonging to one Nandan Choukase and said Nandan Choukase is not party to the suit. As per the petitioner there is dispute between the petitioners and Nandan Choukase. After the application was filed, the

counsel for the petitioners before the learned trial Court did not argue the matter and submitted that his application be allowed because of the directions given by the High Court and that he should be joined as party.

(7) The learned Judge of the trial Court has rightly found that such directions were not given by this Court as it could be seen from the paragraph No.9 of the order in earlier writ petition, which is reproduced hereinabove. Since the application was filed, the learned Judge of the trial Court strictly followed the direction given by this Court and considered the application under Order I Rule 10 of the C.P.C. independently and has rejected the application. The order does not show any error apparent on the part of learned Civil Judge while deciding the application.

(8) In my view, the learned Judge has rightly found that the petitioners are agitating the dispute with one Nandan Choukase and not with the plaintiff – Prabhakar and said Nandan is not even the defendant to the suit. There is no reason to interfere with the order passed by the learned Judge of the Court below.

(9) The writ petition is dismissed. No order as to costs.

JUDGE

Wagh