

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

WRIT PETITION NO.3784 OF 2022

**KALINDAR HAYATKHAN PATHAN AND ANOTHER
VERSUS
DASHRATH GENA WALHEKAR AND OTHERS**

...

Advocate for Petitioners : Prasad Jarare h/f Mr. M. S. Karad

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 04TH APRIL, 2022

PER COURT :

1. This petition impugns the order dated 26-06-2019, passed by the learned Civil Judge Junior Division, Patoda, below Exhibit-72/D in R.C.S. No.181/2013, thereby allowing the application filed by the respondent Nos. 15 to 17 for their impleadment in the suit.

2. The suit is filed by the petitioners – plaintiffs against the defendants – respondent Nos. 1 to 14 for removal of encroachment on 0.10R land by demolishing the houses constructed by the defendants and permanent injunction against the defendants in respect of not to disturb the peaceful possession of 0.80R land of the plaintiffs out of the suit property i.e. Gut No.873, admeasuring 2 H 72 R, situated at village Karegaon, Tq. Patoda, District Beed.

3. In the said suit, respondent Nos. 15 to 17 herein filed the

application Exhibit-72/D claiming that they are interested in the suit property as they are fighting the proceedings filed under the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (for short 'the Consolidation Act') in respect of the suit property. They claimed that excess land was recorded in the name of petitioners during the consolidation scheme and therefore, they initiated the proceedings for correction of record, which was allowed in their favour by the Hon'ble Minister. They are fighting since last several years against the plaintiffs for correction of excess share wrongly recorded in the name of plaintiffs and though the plaintiffs were aware of this fact, however, the plaintiffs have intentionally not added respondent Nos. 15 to 17 as a party defendant in the suit. They claimed that they are the owners and possessors of 1H 28R land out of the suit land Gut No.873/KHA and if they are not added as a party defendant they will suffer irreparable loss.

4. The trial Court allowed the said application taking into consideration the fact that respondent Nos. 15 to 17 were having interest in the suit property and therefore, opportunity needs to be given to them, so as to avoid multiplicity of the proceedings. The petitioners are aggrieved by this order.

5. The learned advocate for petitioners vehemently assailed the impugned order on the ground that since respondent Nos. 15 to 17 are already prosecuting the proceedings under the Consolidation Act their presence in the present proceedings is not necessary and the trial Court ought to have rejected their application.

6. Since the suit pertains to immovable property in which respondent Nos. 15 to 17 have interest, in my opinion the trial Court was justified in directing their impleadment. No prejudice is likely to be caused to the petitioners by the impleadment of respondent Nos. 15 to 17. The trial Court has rightly held that their impleadment is necessary to avoid multiplicity of the proceedings. No fault can be found with the order impugned in the present petition. No case is made out by the petitioners to warrant interference in extraordinary writ jurisdiction.

7. Writ petition being devoid of merits is dismissed. No costs.

(NITIN B. SURYAWANSHI, J.)