

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

WRIT PETITION NO.10393 OF 2014

**MANKARNIKA BHIMRAO PAUL
VERSUS
KALYAN MADHAV GHOLAP AND OTHERS**

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Advocate for Petitioner : Mr. R. C. Bramhankar h/f Mr. N. L. Jadhav
Advocate for Respondent Nos 1 to 3 : Mr. V. H. Pathade h/f
Mr. V. S. Undre

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 25th FEBRUARY, 2022

PER COURT :

1. The petitioner is aggrieved by the order dated 20-09-2014, passed by the learned Joint Civil Judge Junior Division, Washi, below application Exhibit-44 in R.C.S. No.34/2013. By rejecting the application Exhibit-44, the plaintiff's prayer for addition of proposed parties as defendants is rejected.

2. The suit is filed by the plaintiff for partition and separate possession of the ancestral properties. At the time of filing of the suit two sisters, apart from the defendants, were not arrayed as defendants. According to the plaintiff, Triveni Govardhan Miragane and Vimal Laxman Pawar were the two sisters of the plaintiff. However, they both expired before filing of the suit. Vimal did not have any legal heir. However, Triveni had legal heirs. The plaintiff, therefore, filed the said

application Exhibit-44 seeking to add legal heirs of the deceased Triveni as a party defendants in the suit. The said application is rejected by the trial Court on the ground that the plaintiff was having knowledge of the heirs of sister Triveni, but she did not make them parties to the suit and the defendants have contested the suit on the point of non-joinder of necessary parties. Since the suit is fixed for final arguments, hence, the plaintiff cannot be allowed to add the parties. If the prayer of the plaintiff is allowed, it will delay the trial of the suit.

3. Heard the rival submissions of the learned advocate for petitioner and the learned advocate for respondents.

4. Admittedly, the suit is filed for partition and separate possession of the ancestral properties. Since Triveni has legal heirs, they ought to have been arrayed as defendants in the suit, as they would inherit the share of Triveni. Though it is a fact that the plaintiff was not diligent in arraying the heirs of Triveni as defendants in the suit, for that matter the defendants can be compensated by awarding costs. However, if the suit is dismissed on the ground of non-joinder of necessary parties, it would lead to multiplicity of the proceedings. By addition of the legal heirs of sister Triveni as defendants no prejudice is likely to be caused to the defendants. The suit is filed on 19-01-2013 and the application is filed in the year 2014. In that view of the matter, this Court is of the

considered view that the trial Court ought to have allowed the application for addition of party defendants. The reasoning adopted by the trial Court is not acceptable in the facts of the present case.

5. In the result, writ petition is allowed. The impugned order dated 20-09-2014, passed by the learned Joint Civil Judge Junior Division, Washi, below application Exhibit-44 in R.C.S. No.34/2013, is hereby quashed and set aside.

6. Application Exhibit-44 in R.C.S. No.34/2013 is allowed, subject to the petitioner paying cost of Rs.5,000/- (Rupees Five Thousand Only) to the defendants in the trial Court.

7. Writ petition is accordingly disposed off.

(NITIN B. SURYAWANSHI, J.)