

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

903 WRIT PETITION NO.13470 OF 2021

KARNASAHEB RAMCHANDRA VAKTE
VERSUS
KALINDABAI DHARMAJI HON AND OTHERS

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Advocate for Petitioners : Mr. Shailesh S. Chapalgaonkar
Advocate for Respondents 2 & 3 : Mr. Shubham P. Gondkar-Patil

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CORAM : PRITHVIRAJ K. CHAVAN, J.
DATED : 02/03/2022

ORDER :

1. By this petition, the petitioner has invoked supervisory jurisdiction of this Court under Article 227 of the Constitution, challenging the order passed by the learned Civil Judge, Senior Division, Kopergaon on 29th October 2021, rejecting the application moved by the petitioner under Order I Rule 10 of the Code of Civil Procedure (for short 'C. P. C.').

2. At the outset, I do not deem it fit and necessary to interfere with the impugned order since the learned Trial Court has not committed any error or illegality in passing the impugned order. The reasons for not granting the prayer of the petition are as follows :-

(i) The petitioner had moved an application as an intervenor in a suit for partition filed by respondent No. 1, who is daughter of

respondent No. 2. Respondent Nos. 2 and 3 are original defendants in Regular Civil Suit No. 116/2019. Undisputedly, the subject matter of the suit property comprises Gat Nos. 11, 16/2A, 18/1, 105/1A, which are in actual possession of original defendant No. 1. The defendants have no objection to the application moved by the petitioner under Order I Rule 10 of C. P .C. It is apparent from the impugned order and the 7/12 extracts and other revenue record, more particularly, M.E. No. 2279 that the names of legal heirs of deceased Gangubai Namdev Vakte have been recorded qua the property left out by her. The petitioner being son of nephew of deceased i.e. grandson of the deceased is also find mentioned as one of the heirs. The record further reveals that the properties mentioned hereinabove were in actual possession of respondent No. 1.

(ii) The only questions as to whether, in the absence of the petitioner, the suit can be effectively and completely adjudicated upon, and whether, all the questions involved in the suit can be settled in the absence of the petitioner ?; the answer is obviously in affirmative. The learned Trial Court has, therefore, rightly placed useful reliance on a judgment of this Court reported in **2015 Mh.L.J. 163** in the case of **Premanand Gajanan Naik and Anr. Vs. Sachit Gajanan Naik and Anr.** It has been held by the High Court of Bombay at Goa that the real test

for ascertaining the presence of the party would lie in answer to the question as to whether the party has interest in the suit and if the answer is yes, the presence of party would become necessary. Reason being that a party having interest in the lis most likely to be affected directly and substantially in its rights by a decision in the suit. But, care has to be taken to ensure that interest of the party is real and direct, and is not based upon a claim which has no direct relation with the subject matter or cause of action of the suit or the reliefs claimed in the suit.

3. It is apparent that the petitioner herein has no direct and substantial interest in the decision of the suit and therefore, he has no indefeasible right to intervene.

4. This Court cannot, at the drop of a hat, in exercise of its powers of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or courts. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it. The basic purpose of Article 227 is only to keep the courts and tribunals subordinate to it, 'within the bounds of their authority'. Unless there is a patent perversity in the orders impugned or there has been a gross and manifest failure of justice, such powers cannot be exercised. These principles have been, time and

again, reiterated by several pronouncements pursuant to a judgment of Hon'ble Supreme Court in the case of **Waryam Singh Vs. Amarnath, AIR 1954 SC 215.**

5. The order impugned is legal, proper and correct which needs no interference. Consequentially, the petition stands dismissed.

[PRITHVIRAJ K. CHAVAN, J.]

ssc/