

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.781 OF 2020**

TRIMBAK PANDHARINATH THOMBRE
VERSUS
ANURADHA BHASKAR THOMBRE AND OTHERS

Mr. P. N. Kalani h/f Mr. M. B. Ubale, Advocate for
the Petitioner.

Mr. B. P. Thombre, Advocate for Respondent No.1.

CORAM : SANDEEP V. MARNE, J.
DATED : 11th NOVEMBER, 2022.

PER COURT:-

1. By the present petition the petitioner challenges the order dated 10.10.2019 passed by the 2nd Joint Civil Judge, Junior Division, Kaij on application below Exhibit-212 in Regular Civil Suit No.50/2012 by which the application for impleadment of third party has been allowed. The application was moved by respondent no.1 who is the wife of the plaintiff in the suit. She claims interest in one of the properties of which partition is sought between the plaintiff and defendant.

2. I have gone through the orders passed by the Trial Court. In paragraph no.11 of the order, the Trial Court has noted that respondent no.1 claims interest in property admeasuring 2H 31R in Gut No.482 inter alia on the ground that her name is recorded in the record of rights of that property. The Trial Court has observed that the evidence had not started when the application was filed. Considering the above aspects, the Trial Court has proceeded to allow the impleadment application.

3. The learned counsel for the petitioner submits that respondent no.1 is stranger in suit and cannot insist that she must be joined as a party defendant thereto. He further submits that respondent no.1 is wife of the plaintiff and the plaintiff himself has consciously not impleaded her as party defendant, which is indicative of the fact that she has no semblance of right in any of the suit properties. He disputes the position that the trial in the suit had not commenced and submits that the affidavit of evidence of the plaintiff was already filed. He relies upon the decision of this Court in case of **Jagannath Khanderao Kedar and Another Vs. Gopinath Bhimaji Kedar @ Gopinath Bhagwant Mohite and Others, Writ Petition No.6355/2019** decided on 06.06.2022.

4. After hearing the learned counsel for the petitioner, I am of the view that, the Trial Court has not committed any error in allowing the impleadment application of respondent no.1. The respondent no.1 is clearly claiming interest in one of the suit properties. Apparently her name is/was recorded on the 7/12 extract related to Gut No.482 and land bearing Gut No.482 is one of the suit properties in which interest is claimed by her. In such a situation, in my opinion, all the rights of the parties who are claiming interest in the suit property would be decided in a same suit, if respondent no.1 is impleaded in the suit.

5. So far as the stage of trial is concerned, I do not find any reason to disbelieve the finding recorded by the Trial Court that the evidence had not started, when the application for impleadment was moved.

6. The decision in **Jagannath Khanderao Kedar and Another Vs. Gopinath Bhimaji Kedar @ Gopinath Bhagwant Mohite and Others** (supra) is clearly distinguishable. In that case, the plaintiff was opposing impleadment of third party. In the present case the plaintiff has not filed petition challenging the order dated 10.10.2019. Furthermore, in that case the person seeking impleadment was claiming right on the basis of agreement to sale executed by one of the defendants. As against this, respondent no.1 is claiming right in the suit property by claiming that the some portion of the suit property be transferred in her name and her name is mutated in the record of rights.

7. I, therefore, do not find any merit in the present petition. The same is dismissed without any orders as to cost.

(SANDEEP V. MARNE)
JUDGE