

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.2624 OF 2015

1. Smt. Vatsalabai Vishnu Khendkar
Aged about 75 years, Occ: Household
 2. Mahadeo Vishnu Khendkar
Aged about 54 years, Occ: Service
 3. Shri Wasudeo Vishnu Khendkar
Aged about 51 years, Occ: Agriculturist
 4. Gajanan Vishnu Khendkar
Aged about 48 years, Occ: Service
All R/o (1) to (4) Near Harihar Akhada,
Harihar Peth, Akola.
 5. Sau. Lata alias Subhadra Arun Jadhav
Aged about 42 years, Occ: Household,
R/o Sangrampur, Tq. Burhanpur, Dist.
Khandwa.
 6. Sau. Sunita Raju Suryawanshi
Aged about 42 years, Occ: Household,
R/o Station Square, Lal Bag, Burhanpur,
Dist. Khandwa
Nos.5 and 6, through PoA: No.3. **... PETITIONERS**
- VERSUS---**

1. Shri Saptshrungi Devi Sanstha,
Regd. Public Trust, Regd. No.A-133/Akl,
Through its President,
R/o Harihar Peth, Akola,
Tq. and Dist. Akola.
2. ~~Shri Sopan s/o Januji Bhosle,~~
~~Aged about 55 years, Occ: Nil~~
~~R/o Gadge Nagar, Harihar Peth, Akola,~~
~~Tq. and Dist. Akola.~~ Deleted as per
Hon'ble Court's
order dated
01.07.2016

3. Arjun Vishanu Khendkar
Aged about 58 years, Occ: Service
R/o At Post Ambiwali Ganesh Nagar, Lane
No.6, House No.5, Atali-Vadali Road,
Kalyan, Tq. Kalyan, Distt. Thane.
 4. Smt. Mandabai Vasantao Kale
Aged about 52 years, Occ: Household,
R/o Ganesh Nagar, Mothi Umari,
Akola.
 5. Shri Rajesh Vishnu Khendkar
Aged about 35 years, Occ: Business,
R/o Kalambeshwar, Tq. Dist. Akola
 6. Smt. Jyoti Pundlik Khendkar,
Aged about 45 years, Occ: Household,
R/o Behind Gas Godown, Murtizapur, Tq.
Murtizapur, Dist. Akola.
 7. Sau. Laxmi Suresh Khandagale
Aged about 35 years, Occ: Household,
R/o Bhambheri, Tq. Telhara, Dist. Akola
- ...RESPONDENTS**

Shri S.A. Mohta, Advocate for the petitioners.
Shri R.S. Parsodkar, Advocate for respondent no.1.

CORAM : AMIT BORKAR, J.
DATED : AUGUST 24, 2022.

ORAL JUDGMENT :

1. By the impugned order, the Trial Court has allowed an application for a third party to be added as co-plaintiff along with the petitioner in a suit for injunction restraining defendants from disturbing possession of the petitioner over the suit property.

2. The respondent nos.3 to 7 are contesting respondents. Initially, on 21st July 2015, this Court issued notice to respondents. The petition was dismissed against respondent no.3 for not taking steps, which was subsequently restored. By order dated 1st July 2016, this Court stayed the effect and operation of the impugned order. On 15th July 2019, this Court issued notice to respondent no.3 at the correct address. On 20th June 2022, this Court again issued a fresh notice to respondent no.3, stating that the petition would be disposed of at the admission stage. On 20th July 2022, this Court permitted the Advocate for petitioner to serve as Advocate for respondent no.3 appearing in the Trial Court. Accordingly, affidavit stamp no.2 of 2022 stated that the Advocate for the petitioner had served respondent no.3.

3. The petitioners have filed Regular Civil Suit No.46 of 2012 seeking a permanent injunction against the defendants not to disturb their possession of the suit property. Respondent no.3, during the pendency of the suit, applied to add him as a plaintiff. The Trial Court, by order dated 9th July 2013, allowed the application below Exhs.47 and 48, directing the addition of respondent no.3 as plaintiff no.7. The Trial Court allowed the said application holding that respondent no.3 is the son of the original plaintiff. The petitioners are plaintiffs nos.1 to 6 and, being

dominant status, have the choice to join a person as a plaintiff. It is for the plaintiffs to decide who must be added to the suit as a plaintiff; if plaintiffs do not want to add respondent no.3 as a co-plaintiff, no rights of respondent no.3 would be affected as there is no adjudication of rights of respondent no.3 in the said suit while incorporating respondent no.3 as a plaintiff no.7. If the respondent no.3 intends to claim any legal rights in relation to suit property independently, he can pursue the legal remedies available to him in law. Since petitioners, plaintiffs, do not want respondent no.3 to be added as plaintiff no.7, the Court could not have asked plaintiffs to add respondent no.3 as plaintiff no.7.

4. In that view of the matter, the impugned order cannot be sustained. Accordingly, the impugned order dated 9th July 2013 passed by learned 11th Civil Judge Junior Division, Akola in Regular Civil Suit No.46 of 2012 is quashed and set aside.

5. It is made clear that the rights of respondent no.3 to claim rights in relation to suit property are kept open.

6. The petition stands disposed of in the above terms. No costs. Pending civil application (s), if any, stand disposed of.

JUDGE

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