

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION NO. 3737 OF 2022

Sheikh Abdul Gani Sheikh and others -- Petitioners

Vs.

Keshav Bapurao Khekare and another -- Respondents

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S.C. Bhalerao, Advocate for Petitioner
Mr. N.M. Kolhe, Advocate for Respondent No.1
Mr. Mir Rizwan Ali, Adv. for respondent No.2

CORAM : AVINASH G. GHAROTE, J.

DATE : 10th OCTOBER, 2022

The respondent No.1 Keshav, is the plaintiff in RCS. 32/2018 filed by him against respondent No.2 seeking to remove encroachment on a land out of survey No.4/1/A situated at Khairgaon (Bk.) Tah. Maregaon Dist. Yavatmal. The entire land of Gat N.4/1/A was 2.92 H.R. The plaintiff / respondent No.1 prior to the institution of the suit by way of sale deed dt. 17/3/2016 had sold 1.68 HR land from and out of this land of Gat No.4/1/A to the petitioner No.3. The defendant / respondent No.2 had also sold the land which is alleged to have been encroached to the petitioners Nos.1 and 2 by sale deed 18/5/2018. The aforesaid petitioners filed an application for impleading them as defendants to the suit, which application has been rejected by the impugned order

dt. 14/3/2022 (page 21) on the ground that the filing of the suit does not affect their interest.

2. I am afraid, I am not able to concur with these reasoning as by the aforesaid two sale deeds, rights have already been created in the petitioners No.1 and 2 in the suit land, which is 1.24 HR from and out of the land of Gat No.4/1/A and therefore, in any suit for removal of encroachment the petitioners No.1 and 2 would obviously be proper and necessary party as without their presence no effective decree can be passed in the suit. Insofar as petitioner No.3 is concerned, there is no dispute regarding the land purchased by her from original plaintiff / respondent No.1 in view of which she may at the most be a witness in the suit and not a proper and necessary party, as the land which is sold to her, is admittedly not the subject matter of the suit. That being the position, the impugned order is hereby quashed and set aside insofar as it relates to petitioners No.1 and 2 are concerned and the application below Exh.19 is accordingly allowed to that extent. The impugned order insofar as it relates to the petitioner No.3 is maintained. The petition is partly allowed in above terms. No costs.

(AVINASH G. GHAROTE, J.)