

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

CIVIL APPLICATION (CAW) NO.152/2021

IN

WRIT PETITION NO.3821/2017

Smt. Lilabai Shreeram Kale and another

...Versus...

Bhanudas S/o Dnyanba Bhalerao and others

with

WRIT PETITION NO.4525/2022

Pandurang S/o Dnyanba Bhalerao and another

...Versus...

Bhanudas S/o Dnyanba Bhalerao (Dead) through his legal heirs

Sou. Shashikalabai W/o Vishnudas Bhalerao

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

Court's or Judge's orders

Shri A.R. Deshpande, Advocate for petitioners in WP No.3821/2017
Shri R.N. Ghuge, Advocate for petitioners in WP No.4525/2022
Shri B.N. Mohta, Advocate for respondents in both petitions

CORAM : AVINASH G. GHAROTE, J.

DATE : 06/10/2022

1. The civil application seeks to bring on record the legal heirs of respondent no.1 - Bhanudas Dnyanba Bhalerao, who has passed away on 16/09/2019.

2. Learned counsel for the other side has no objection, considering which, the civil application is allowed. The addition be carried out forthwith.

3. Advocate Shri Mohta, waives service of notice for the newly added respondents (legal heirs of respondent no.1 Bhanudas Dnyanba Bhalerao).

WRIT PETITION NO.3821/2017

1. Heard Shri Deshpande, learned counsel for the petitioners and Shri Mohta, learned counsel for the respondents. The petition challenges the order dated 23/08/2016 below Exh.66, whereby the application filed by the petitioners for being added as defendants in Regular Civil Suit No.172/2013 has been rejected on the ground that the enquiry in that regard is a limited one and therefore in the suit for eviction filed by the respondent no.1, the sisters/petitioners may not be necessary parties. The addition was sought, on the ground that the property is ancestral in nature and therefore the petitioners also have a share therein and they were not assured of the *bona fides* of the plaintiff/respondent no.1 in prosecuting the proceedings, which according to them was for his own benefit.

2. It is also not in dispute that the original respondent Bhanudas Dnyanba Bhalerao who was the plaintiff in Regular Civil Suit No.172/2013 is the defendant no.1 in Regular Civil Suit No.172/2015, which is a suit filed by

Pandurang Dnyanba Bhalerao (defendant no.1 in Regular Civil Suit No.172/2013), which is a suit for partition and separate possession of the property in question on the ground that the same is an ancestral property, in which the sisters are already parties defendants. The property which is subject matter in both the suits is the same in relation to the house CTS No.117 though the property in Regular Civil Suit No.172/2013, is comprised of more properties. An application for consolidation of both the suits filed in Regular Civil Suit No.172/2013 has been rejected by the learned Trial Court which is then challenged in Writ Petition No.4525/2022.

3. The issues framed in both the suits indicate that the status of the property whether it is self-acquired or ancestral, is to be decided, considering which, it would be appropriate, if the both the suits are decided together and the sisters are permitted to be joined as parties defendants in Regular Civil Suit No.172/2013, considering their apprehension as expressed above, in view of which, the impugned order dated 23/08/2016 below Exh.66 in Regular Civil Suit No.172/2013 is hereby quashed and set aside and the application Exh.66 is hereby allowed. Writ Petition No.3821/2017 therefore stands allowed.

4. Considering the commonality of the issues framed in both the suits regarding the nature of the suit property, the

impugned order dated 28/06/2022 below Exh.126 in Regular Civil Suit No.172/2013 is hereby set aside and the application Exh.126 is allowed. Both the suits are consolidated and shall be decided by common judgment. Writ Petition No.4525/2022 is also allowed.

5. There shall be no order as to costs.

(AVINASH G. GHAROTE, J.)

Wadkar