

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

WRIT PETITION NO. 1244 OF 2022

(Nandkishor Shrinarayan Agrawal and others ..vs.. Rajkumar Radheshyam Agrawal and others)

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

Court's or Judge's orders

Mr. B.N. Mohta, Counsel for the petitioners.

CORAM : ROHIT B. DEO, J.

DATED : 04-04-2022

The petitioners are the plaintiffs in Regular Civil Suit 77/2001 brought for decree of possession. The plaintiffs claim to be the owners of the suit property which is agricultural field assigned Survey 262, admeasuring 11.25 H.R. situated at village Andura, Tahsil – Balapur, District - Akola.

2. The plaintiffs aver that the suit property was owned by late Mr. Shrinarayan Agrawal who died on 05-10-1987 leaving behind him the plaintiffs as legal heirs. In view of the extremely narrow controversy, the suit averments need not be considered elaborately and suffice it to state that the possession is sought from the defendants on the premise that the defendants are not tenants and their possession qua the suit field is illegal.

3. Respondent 1-Mr. Rajkumar Radheshyam Agrawal preferred an application under Order I Rule 10 of the Civil Procedure Code (Code) for his addition in the

array of plaintiffs. Mr. Rajkumar Radheshyam Agrawal claimed that the suit field is an ancestral property which was recorded in the name of Mr. Shrinarayan Agrawal, who was the grandfather of the applicant. Late Mr. Shrinarayan Agrawal and his wife Mrs. Shantabai had three sons namely Radheshyam, Nandkishor and Lalitkumar and two daughters. A reference is then made to certain litigations under the Tenancy Act and the order passed by this Court on 02-11-2017. The applicant asserts that as the son of Mr. Radheshyam Agrawal, he has undivided share and interest in the suit field and he is deliberately excluded from the array of the plaintiffs and the plaintiffs further avoided to implead his father namely Mr. Radheshyam Agrawal as party plaintiff. Mr. Rajkumar Agrawal pointed out that his father Mr. Radheshyam Agrawal was the original applicant in the application filed against the defendants under Section 100(2) of the Bombay Tenancy and Agricultural Lands Act and was a party in the spate of litigations which followed. It was on the basis of such averments that Mr. Rajkumar Agrawal sought permission to be joined as plaintiff 6.

4. The petitioners objected contending that the suit is instituted in 2001. The petitioners do not deny that the father of the applicant was one of the applicants in the tenancy proceedings. It is further not denied by the petitioners that the father of the applicant Mr. Rajkumar Agrawal, was not impleaded as party plaintiff or for that

matter even as a proforma defendant. Rather it is contended by the petitioners that one of the co-owners is entitled to sue for possession. It is further contended that Mr. Rajkumar Agrawal is not a necessary party.

5. The learned trial Judge was pleased to allow the application under Order I Rule 10 of the Code, reasoning thus :

“Totality of facts and circumstances before this Court clearly points that the applicant alongwith his other co-heirs from the branch of Radheshyam, are prima facie sharing alleged title to the suit property. Present suit is for possession and mesne profits on the ground that defendants are not tenants. In the event of decree in the present suit, only present plaintiffs would get possession. Further, considering the stand of present applicant and plaintiffs which has come before this court in the hearing of present application, in the event of decree another dispute between plaintiffs and present applicant may start, which will multiply the proceeding. Although, present applicant has come before the court after much delay, it is also to be borne in mind that till date cross-examination of plaintiff (PW1) has not yet started. As the applicant has requested for impleading him as party, and for all above facts and reasons it appears that he alongwith his other co-heirs ought to have been joined as plaintiffs or defendants. Further, considering the internal dispute between the applicant and plaintiffs it would be appropriate to implead present applicant as party defendant instead of party plaintiff. Further, as per mandate of rule of law as held in Shivananda (supra), this court is duty bound to exercise its power under Order I, Rule 10 of the Code of Civil Procedure, to direct plaintiffs to add all heirs of Radheshyam in present suit as party defendants, as they are necessary party in the suit. All these heirs of Radheshyam, would get right to plead their case by filing their

written statement. This would ensure complete resolution of all disputes between the parties, thereby avoiding multiplicity of proceeding. In view of above, the present application deserves to be partly allowed with necessary direction to plaintiffs.”

6. I see no error in the view taken. The learned Counsel Mr. B.N. Mohta presses in service the decision of the Hon’ble Supreme Court in the case of ***Mohinder Prasad Jain v. Manohar Lal Jain, AIR 2006 SC 1471***. I am afraid, the ratio thereof does not take the case of the plaintiffs any further. The question before the Hon’ble Supreme Court was whether non-joinder of the other co-owners of the suit property in eviction petition is fatal. Answering the question in the negative, the Hon’ble Supreme Court held that one of the co-owners can file a suit for eviction of a tenant in the property generally owned by the co-owners. Notably, the Hon’ble Supreme Court was considering an objection raised by the tenant/s that non-joinder of some co-owners makes the suit vulnerable and the defect is fatal. Similarly, the other decision on which reliance is placed by Mr. B.N. Mohta in the case of ***India Umbrella Manufacturing Co. and others v. Bhagabandei Agarwalla (Dead) by LRs. Savitri Agarwalla (Smt) and others, (2004) 3 SCC 178***, is on similar facts and does not consider the entitlement of the co-owner who wishes to join and participate in the litigation. Both the decisions which are pressed in service essentially deal with the objection raised by the tenant in possession, that all the co-owners not having joined in

the suit, the suit must fail on the ground of non-joinder of necessary parties.

7. As a co-parcener, Mr. Rajkumar Agrawal undoubtedly has right to participate in the litigation and the view taken by the learned trial Court is unexceptionable.

8. Before parting with the order, in fairness to the learned Counsel Mr. B.N. Mohta, it is also submitted that the learned trial Court has directed all the legal heirs of Mr. Radheshyam Agrawal to be joined as parties, although there is no formal application on their behalf. I note that Mr. Rajkumar Agrawal is the son of Radheshyam Agrawal who brought to the notice of the Court the fact that other than the plaintiffs there are others who have share in the property and who may be interested in participating in the litigation. While the application may have been preferred only by Mr. Rajkumar Agrawal, I do not see any bar or embargo which can preclude the civil Court from issuing a direction that all the legal heirs be joined as parties. If any legal heir has any exception, he or she would certainly be free to agitate that before the civil Court. The order impugned, however, cannot be faulted.

9. The petition is dismissed.

JUDGE

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Digitally signed by PRAFULLA
MANOHARRAO ADGOKAR
Signing Date: 06.04.2022 17:19