

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.2781 OF 2022**

**ASHAWATI SURESHRAO BODHANKAR
VERSUS
RAGHUNATH GOPALAL INAGLE AND OTHERS**

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Mr. Anand P. Bhandari, Advocate for the Petitioners.

Mr. Suraj R. Bagul h/f Mr. Bharat N. Gadegaonkar, Advocate for the Respondent No.1.

Mr. Suraj R. Bagul, Advocate for Respondent Nos.2 and 3.

**CORAM : SHARMILA U. DESHMUKH, J.
DATED : 03rd JANUARY, 2023.**

PER COURT:-

1. The present petition challenges the dated 15.11.2021 order passed below Exhibit-211 in Regular Civil Suit No.659/2005, whereby the petitioner herein was directed to add respondents as party defendants.

2. The respondent nos.2 and 3 are third party applicants, who filed an application for being impleaded as a party defendants in the suit bearing RCS No.659/2005 filed by the petitioner herein against respondent no.1 seeking declaration of ownership and permanent injunction in respect of the land bearing Gut No.230 situated at village Kamtha (Kd.), Tq. & Dist. Nanded. In respect of the same property, respondent nos.2 and 3 claimed ownership on the ground that the said property was ancestral property and also an independent right was claimed that respondent no.1-Raghunath Ingale by a registered sale deed of the year 2006, sold the suit property to respondent nos.2 and 3. RCS No.15/2015 was filed by respondent nos.2 and 3 claiming ownership and perpetual injunction. By order dated 30.08.2019, on an application filed by the present

petitioner in the said RCS No.15/2015, the Trial Court had stayed the proceedings in RCS No.15/2015 filed by respondent nos.2 and 3 till the decision of RCS No.659/2006. Subsequent thereto, an application came to be filed in the suit bearing RCS No.659/2005 by respondent nos.2 and 3 for being impleaded as party.

3. Heard the learned counsel appearing for the parties.

4. Learned counsel appearing for the petitioner submits that the application for being impleaded as party has been filed at belated stage at the time of final arguments and the only purpose of the application is to delay the proceedings. He would further urge that respondent nos.2 and 3 had knowledge of the present proceeding since the year 2015 and hence, application which is filed at the belated stage cannot be entertained. He would further contend that the petitioner is '*dominus litis*' and cannot be compelled to implead respondent nos.2 and 3 as party defendants.

5. Per contra learned counsel appearing for the respondents supports the impugned order. He would urge that the application came to be filed, as by order dated 30.08.2019 passed in RCS No.15/2015 their suit claiming ownership of the property came to be stayed and it is not their intention to delay the proceedings. He would further urge that the petitioner is bound to be affected by the outcome of the proceedings, hence, the present respondent nos.2 and 3 are necessary and proper party.

6. I have considered the rival submissions of the parties.

7. The admitted position is that the rival claims of ownership have been raised by the petitioner and the respondent

nos.2 and 3 in respect of the same suit property. The present petitioner had initiated the suit claiming ownership of the property in the year 2005 and since, the suit filed by respondent nos.2 and 3 was a subsequent suit, the same came to be stayed under Section 10 of the Code of Civil Procedure. As the application pertaining to the stay of the suit was filed on 05.12.2018 by the petitioner herein in RCS No.15/2015, which came to be decided on 30.08.2019, it cannot be said that the petitioner had intentionally filed the application for being impleaded as party at the belated stage. The respondent nos.2 and 3 were pursuing their independent proceedings by way of RCS No.15/2015 and it is only by reason of the stay of their suit, that the petitioners were constrained to file an application for being impleaded as party in RCS No.659/2005. The claim of the petitioners as set out in their suit bearing RCS No.15/2015 is that the suit property is ancestral property and they are also claiming rights through a registered sale deed executed in the year 2006. Since, the present suit bearing RCS No.659/2005 also claims a right of ownership in the same property, respondent nos.2 and 3 are bound to be affected by the outcome of the proceedings. The application filed by respondent nos.2 and 3 has to be considered on the touchstone of Order I Rule 10 of the Code of the Civil Procedure and it is settled that if a party has direct and substantial interest in the property, he has every right to be impleaded as party to the proceedings for adjudication of the controversy in issue.

8. Considering the provision of Order I Rule 10 and the admitted position that respondent nos.2 and 3 are the sons of Raghunath Ingale, who has sold the property alleged to be an

ancestral property in favour of the petitioner, the Respondents are bound to be affected by the outcome of the suit bearing RCS No.659/2005 and further considering that their own suit bearing RCS No.15/2015 is stayed under Section 10 of the Code of Civil Procedure, the order dated 15.11.2021 permitting impleadment of respondent nos.2 and 3 cannot be faulted with.

9. I am, therefore, not inclined to interfere with the impugned order dated 15.11.2021 passed by the 4th Joint Civil Judge, Senior Division, Nanded in RCS No.659/2005.

10. Writ Petition is accordingly dismissed.

(SHARMILA U. DESHMUKH)
JUDGE