

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

34 WRIT PETITION NO.1671 OF 2023

**YOGESH DEVAJI MALI WAGH AND OTHERS
VERSUS
HARISHBHAI RAMAKANT DAVE AND OTHERS**

...
Advocate for Petitioners : Ms. Ansari Asfia Nuzhat

...

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 14-02-2023

PER COURT :

. Heard.

2. By this petition, the petitioners have challenged the order dated 08.11.2022 passed in Special Civil Suit No.21 of 2017 wherein the petitioners' application for being impleaded as a party under the provisions of Order-I, Rule-10 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC') came to be dismissed.

3. Special Civil Suit No. 21 of 2017 was instituted by the Respondent no.1 against the respondent nos.6 and 7 for specific performance of agreement of sale dated 04.12.2010. In the said proceedings, various applications were filed by the other co-parceneres contending that the property which forms the subject matter of the agreement for sale is ancestral property and sought

impleadment. All these applications came to be dismissed by the trial Court.

4. Heard the learned counsel appearing for the petitioners.

5. The learned counsel for the petitioners submits that as the property which is the subject matter of the agreement for sale is ancestral property, the rights of the petitioners are bound to be affected. She further submits that an issue has been framed in the Special Civil Suit as regards the nature of the property being ancestral property and in view of the said fact the presence of the petitioners is necessary.

6. The learned counsel for the petitioners has not placed on record the copy of the issues to demonstrate that such an issue is framed. In my opinion, in a suit for specific performance of the same, in the absence of any such contention being taken, the probability of an issue as to the ancestral nature of the property does not appear to be sustainable. It is settled by various decisions of this Court that in the suit for specific performance, it is the parties to agreement for sale who are the necessary parties. As regards the contention of the learned counsel for the petitioners that the partition suit had been decreed and the rights are determined, in event the

partition is effected by metes and bounds shares of the respondent nos.6 and 7 will be adjusted as against property which is alleged to have been sold by virtue of agreement for sale.

7. For the aforesaid reasons, there is no merit in the writ petition. Writ petition stands dismissed.

(SHARMILA U. DESHMUKH, J.)

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