

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

45 WRIT PETITION NO.1581 OF 2016

**PRABHAKAR NIVRUTTI KHARAD
VERSUS
DURGADAS ANANTRAO DESHPANDE AND OTHERS**

...

Advocate for Petitioner : Mr. Yogesh B. Bolkar
Advocate for Respondent Nos.9 to 18 : Mr. Pratap B. Vikhe – Patil
h/f. Mr. S.J. Salunke

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CORAM : SHARMILA U. DESHMUKH, J.

DATE : 25-01-2023

PER COURT :

. Heard.

2. By this petition the petitioner challenges the order dated 13.01.2016 passed by 2nd Jt. Civil Judge Jr. Division, Ambad below Exh.23 in Regular Civil Suit No.125 of 2013 whereby the application of the intervenors i.e. Respondent nos.9 to 22 came to be allowed.

3. The petitioner instituted Regular Civil Suit No.125 of 2013 seeking a declaration of ownership on the basis of adverse possession in respect of the suit property. The admitted position is that the respondent nos.9 to 22 are the brothers and the predeceased children of the other brothers of the petitioners.

4. The learned counsel for the petitioner submits that the

right to the ownership is claimed on the basis of Will Deed executed in the year 1985 by the father of the petitioner in favour of the petitioner. He further submits that the respondent nos.9 to 22 are not necessary parties.

5. In support of his contention, he relies upon the following decisions of this Court:

- (i) **Gurmit Singh Bhatia vs. Kiran Kant Robinson and Others**, (2020) 13 SCC 773
- (ii) **Mohamed Hussain Gulab Ali Shariffi vs. Municipal Corporation of Greater Bombay and Others**, (2020) 14 SCC 392
- (iii) **Jagannath Khanderao Kedar and another vs. Gopinath Bhimaji Kedar and Others**, (2022) 6 Mah LJ 277

6. Per contra, learned counsel for the respondents no.9 to 22 supports the impugned order and claims that the respondent nos.9 to 22 are necessary parties as they have interest in the subject property. He further submits that the petitioner claims exclusive ownership of the suit property on the basis of adverse possession and the outcome of the proceedings is likely to affect the right of the respondent nos.9 to 22.

7. Considered the rival submissions. The issue which is required to be determined whether the respondent nos.9 to 22 are necessary parties on the touchstone of Order-I, Rule 10 of the Code of

Civil Procedure. The suit property is being claimed by the petitioner on the ground of the adverse possession. The respondent no.9 to 22 are not strangers to the suit property, but they are the legal heirs of father of the petitioner. It is the case of the respondents in their application that they are the close relatives of the petitioner and they are also in possession of the suit property.

8. As far as the decisions which have been relied upon by the learned counsel for the petitioner are concerned, the decisions are rendered by taking into consideration the facts of that cases which are clearly distinguishable. It is settled position that if the outcome of the proceedings would affect the interest of the parties seeking impleadment, those parties are necessary parties. In the present case, admittedly, the intervenors i.e. respondent nos.9 to 22 are the close relatives of the petitioner and as such, it cannot be said that they have no interest in the suit property particularly when they are also claiming to be in possession of the suit property.

9. For the reasons stated above, there is no merit in the writ petition and the same is dismissed.

(SHARMILA U. DESHMUKH, J.)