

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8555 OF 2023

Sandip Machindra Karale
and another

.... Petitioners

Versus

Machindra Laxman Karale
and others

.... Respondents

.....

Mr. K.N. shermale, Advocate for the Petitioners

Mr. U.S. Malte, Advocate for Respondent No.1

Mr. Z.M. Pathan, Advocate for Respondent Nos.2 and 3

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 03rd AUGUST, 2023

ORDER :

1. Application Exhibit-120 filed by the petitioners/plaintiffs in Regular Civil Suit No.280 of 2007 for addition of party defendants is rejected by the impugned order passed by the learned Civil Judge, Senior Division, Newasa.

2. Pursuant to, the petitioners/plaintiffs have filed suit for partition of Gut No.40/2 admeasuring 0 Hectare 41 R, which is the part of Gut No.40 situated at *Mouje Handinimgaon*. The defendants appeared and filed suit by filing written statement. There is an averment in the written statement that, various sale transactions were done in respect

of Gut No.40/1. The subsequent purchasers are not arrayed as defendants in the suit, and therefore, the suit is bad for non-joinder for necessary parties. Thereafter, at the instance of defendants, by order passed below Exhibit-109, the Trial Court framed additional issue, "*whether the suit is bad for necessary parties*". Pursuant to framing of that issue, present application under Order I Rule 10(2) of the Code of Civil Procedure is filed by the petitioners/plaintiffs for addition of defendant Nos.4 to 17, which is rejected by the Trial Court. Hence, the present petition.

3. Heard the learned advocate for the petitioner and the learned advocates for the respective respondents. Perused the writ petition memo, annexures thereto, and the impugned order.

4. Indisputably, the petitioners/plaintiffs have filed the suit for partition only to the extent of Gut No.40/2 admeasuring 0 Hectare 41 R., therefore, transactions in respect of Gut No.40/1 are not at all relevant. It appears from the record that the said transactions in respect of Gut No. 40/1 were with the consent of the petitioners/plaintiffs, and therefore, the petitioners/plaintiffs are not disputing those transactions. Since, the suit property is only Gut No.40/2

admeasuring 41 R, there is no need to add the purchasers of Gut No.40/1 as party defendants. The Trial Court is justified in rejecting the application, holding that proposed defendants cannot be termed as necessary/proper parties, and in their absence also, the Court can decide the suit factually and finally. There is There is no illegality or perversity in the order impugned in the present petition. The writ petition being devoid merit is dismissed.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane