

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

WRIT PETITION NO.13176 OF 2022

**BALAJI PRAKASH CHINCHOLE AND ANOTHER
VERSUS
THE COLLECTOR, LATUR AND OTHERS**

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Advocate for Petitioners : Mr. Gaurav L. Deshpande
AGP for Respondents – State : Mr. P.G. Borade
Advocate for Respondent Nos.4 to 10 : Mr. H.V. Tungar

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 27th SEPTEMBER, 2023

PER COURT :

1. By this petition filed under Article 226 and 227 of the Constitution of India, petitioners impugn order dated 05/07/2022, passed by learned Civil Judge, Senior Division, Latur, below Exhibit-17, in Regular Civil Suit No.266/2017, thereby allowing application filed by respondent Nos.4 to 10 for adding them as party defendants in the suit.

2. Petitioners filed Regular Civil Suit No.266/2017 for permanent injunction against respondent Nos.1 to 3 claiming that suit property is *Inam* land, which was being managed by petitioners' grandfather namely Vishwananth Narsoba Chinchole. After his death, his son Prakash i.e. father of petitioners, was managing the *Devasthan*. Petitioners moved revenue authorities for recording their names in other rights column of suit property, by

filing *Virasat* proceeding. However, said proceeding was not allowed. Petitioners, therefore, contended that suit property being *Inam* property, it was being cultivated by grandfather and father of petitioners since 1955 and since name of petitioners' grandfather is still appearing in revenue record of suit property and as petitioners are cultivating suit property, respondent Nos.1 and 2 were not justified in putting suit land for auction. In the suit, temporary injunction is granted in favour of petitioners by the trial Court vide order dated 18/08/2021.

3. Respondent Nos.4 to 10 being third party, filed application Exhibit-17 in the suit, with prayer to add them as party defendants contending that plaintiffs have suppressed fact from trial Court that Vishwanath died on 05/06/1976, however, prior to that names of Vishwanath and his brothers Baliram, Vithoba, Manik, Sambhaji and Nagorao were entered as protected tenants of suit property. So also, their names were entered in revenue record. They were cultivating suit land. However, plaintiffs by suppressing this fact have claimed that only Prakash was cultivating suit land. Respondent Nos.4 to 10, therefore, claimed that since they being tenants have right in respect of suit property, they are necessary and proper parties, and prayed for allowing application.

4. Petitioners/plaintiffs opposed the application by filing

say at Exhibit-19 contending that name of Vishwanath is recorded in revenue record as Manager and his legal heir Prakash, father of petitioners, had obtained legal heirship certificate. Therefore, as per record till death of Vishwanath he was looking after *Devasthan* and after his death grandfather and father of plaintiffs were looking after *Devasthan*. Petitioners, therefore, claimed that without any document in support of contention raised by third party applicants, application is not maintainable.

5. Trial Court observed that, it appears from documents filed by third party applicants at Exhibit-24 that in other rights column name of Vishwanath is appearing and considering adverse claims by both the parties, it is proper to add third party applicants as party defendants, so that both parties can get opportunity to substantiate their respective stand. Petitioners are aggrieved by this order.

6. Heard learned advocate for petitioners, learned advocate for respondent Nos.4 to 10 and learned Assistant Government Pleader for respondent Nos.1 to 3. Perused writ petition memo, annexures thereto, impugned order and affidavit-in-reply filed by respondent Nos.4 to 10.

7. It appears from record that names of respondent Nos.4 to 10 are appearing in revenue record. Trial Court is, therefore,

justified in allowing application filed by respondent Nos.4 to 10. Addition of respondent Nos.4 to 10 in present suit is necessary, so as to decide the suit on merit and to avoid multiplicity of proceedings. No prejudice is likely to be caused to petitioners, if respondent Nos.4 to 10 are added as defendants.

8. There is no illegality or perversity in the order impugned in present petition. Executing Court has not committed any jurisdictional error or error of law while passing impugned order. Writ petition being devoid of merit is dismissed.

(NITIN B. SURYAWANSHI, J.)