

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.10799 OF 2019**

SUNIL TUKARAM PANCHAL AND OTHERS
VERSUS
BASAWAJ PRABHU SAMGE AND OTHERS

...
Mr. G. R. Syed, Advocate for the Petitioners.
Mr. Ameya N. Sabnis, Advocate for Respondent No.3.

...
**CORAM : SHARMILA U. DESHMUKH, J.
DATED : 27th FEBRUARY, 2023.**

PER COURT:-

1. The petition takes exception to the order dated 25.06.2019 passed below Exhibit-45 in RCS No.696/2018 allowing the application of respondent no.3 for being impleaded as a party to RCS No.696/2018.

2. Briefly stated the facts of the case are as under:

The petitioners instituted RCS No.696/2018 seeking declaration of ownership and possession of the suit property being land plot No.1, Survey No.267/2/1. The description of the suit property in the plaint is as under:

East:	Landed property of defendants.
West:	Landed property of Gundu Baswantappa Samge.
South:	Landed property of defendants and
North:	Udgir-Shirol Janapur Road, situated at Udgir, Tq. Udgir, Dist. Latur.

3. It is a case of the petitioners that the petitioners' father had purchased the suit property from respondent nos.1 and 2 and their father by way of registered sale deed dated 01.08.2000. On the basis of the sale deed, the necessary mutation entries were effected in the revenue record and upon demise of their father the names of the petitioners have been mutated on

20.03.2018. The cause of action for instituting the proceedings is that on 01.12.2018, when the petitioner no.3 had gone to the suit property there was a bore sunk in the suit property adjacent to the road and it was learnt that it is respondent nos.1 and 2, who had carried out the activities. Due to personal difficulties, the petitioners had to leave the village and when they returned on 11.12.2018 it was found that there was some construction material brought on the suit property and there was some traces of commencement of construction. Apprehending disturbance of possession on part of Respondent nos.1 and 2, the suit came to be filed.

4. On 14.03.2019, an application was preferred by respondent no.3 under Order I Rule 10 (2) of the Code of Civil Procedure for being impleaded as party to the suit. It was the case of respondent no.3 that he was the owner and possessor of the land block no.267/3 admeasuring 5H 4R situated at village Udgir and the suit land of respondent no.3 is adjacent to Udgir to Kaulkhed-Sirol-Janapur Road towards Southern Side. The application further states that the father of the petitioners and his vendor alongwith his son had created false sale deed of 01.08.2000 showing the four boundaries of respondent no.3's land in the sale deed. It was further stated that respondent no.3 had obtained N.A. permission of road adjacent land block no./survey no.267/3 of Udgir and had alienated the road adjacent plots to third party, who are having ownership and possession of the respective plots. It was the case of the applicant that the petitioners had shown the false four boundaries in the suit, which boundaries were in fact the boundaries of respondent no.3's lands, which is evident from the survey map of the year 1969.

5. This application was opposed by the petitioners, wherein it was stated that respondent no.3 and his deceased father had instituted RCS No.129/2001 in respect of survey no.267/3 against the respondents claiming to be the owner of the land admeasuring 8H 26R abutting to the Eastern side of the land survey no.267/2 of respondent nos.1 and 2, which came to be decreed. In the appeal preferred by respondent nos.1 and 2, it was held that respondent no.3 and his father were not the owner of the land survey no.267/3 to the extent of 8H 26R. The application was opposed on the ground that, false revenue record without any foundation were prepared by respondent no.3 and deceased father of respondent no.3 had purchased the land out of survey no.267 only to the extent of 10 acre 33 gunthas. The petitioners claimed to be in possession of plot no.1 within the area of land survey no.267/2, which was purchased prior to institution of the suit RCS No.129/2001. The application for impleadment was opposed on the ground that the petitioners had nothing to do with respondent no.3.

6. As in order passed in the suit would affect the rights of the property and apprehending this possession by virtue of any decree which would be passed, an application was made for being impleaded as party. It is the order which has been passed on this application, which is impugned in the present case.

7. In the present petition an affidavit-in-reply has been filed by respondent no.3, which annexes survey map of land bearing survey no.267.

8. Heard learned counsel appearing for the parties.

9. Learned counsel appearing for the petitioners submits that the property of the petitioners is survey no.267/2/1, whereas respondent no.3 claims an ownership in respect of plot bearing survey no.267/3. He would submit that respondent no.3 has no concern with the suit land and as such, was not a necessary or proper party. He would further submit that respondent no.3 has suppressed the material fact of filing and decision in the previous suit bearing RCS No.129/2001. The proceedings in the suit bearing RCS No.129/2001 has been placed on record by the petitioners and the attention of this Court is invited to the compromise pursis passed in the Second Appeal, wherein it was agreed that the appellants and respondents shall be the owner of the land to the extent of 1H 16R in North-West corner of land survey no.267/3. He has pointed out the boundaries, which are shown in the compromise pursis of land survey no.267/3, which reads as under:

Towards East	:	The remaining land of appellants in Sy. No.267/3.
Towards West	:	Land of Babu Samge, Baswaraj Prabhu Samge Manohar Prabhu Samge and Amrat Samge.
Towards South	:	Land of appellants in Sy. No.265.
Towards North	:	Udgir-Kaulkhed Road.

In support of his contention he relies upon the following decisions:

1. ***Govind Sinai Orti Since Deceased, Through His Heirs and Legal Representative Vs. Govind Usno Bhobe & Others; Civil Revision Application No.86 of 1996; dated 2.12.1998.***
2. ***Devchand Constructions Vs. Board of Trustees of the Port of Mormugao & Anr.; Writ Petition No.158/2006; dated 23.8.2006.***

3. ***Ramesh Hiranand Kundanmal Vs. Municipal Corporation, Greater Bombay; Civil Appeal No.3570 of 1991; dated 4.3.1992.***

10. Per contra learned counsel appearing for the respondents submits that respondent no.3 has direct and substantial interest in the subject matter in as much as the boundaries of his land i.e. land bearing survey no.267/3 are being shown as boundaries of the petitioners' land i.e. survey no.267/2/1. He has invited the attention of this Court to the survey map which is annexed at page no.38 of the reply and would point out that the claim of the petitioners is respect of survey no.267/2 and the boundaries of his land are being shown. In support of his submission he has relied upon the following decisions: ***V.Rajendran and another Vs. Annasamy Pandian (Dead) through Legal Representative Karthyayani Natchiar***, reported in ***(2017) 5 SCC 63***.

11. Considered the submissions of the parties.

12. The petitioners are claiming ownership in respect of the suit property i.e. plot no.1, survey no.267/2/1. This property is claimed to be bounded on the Northern side by the Udgir-Shirol Janapur Road as described in the suit. It is the case of the petitioners that, this property was purchased by virtue of registered sale deed dated 01.08.2000. In the context of considering an application under Order I Rule 10 of the Code of Civil Procedure, it will be required to ascertain as to whether the outcome of this proceeding will affect the right, title and interest of the third party applicant. In the present case, respondent no.3 has come with the specific case that the boundaries of his land i.e.

survey no.267/2 is shown as the boundaries of the suit land. A perusal of survey map relied upon by the Respondent No 3 shows that the property bearing no.267/3, which is owned by respondent no.3, is bounded on the Northern side by the Shirol-Janapur Road, whereas the property bearing survey no.267/2 in which the petitioners claim a right of ownership is bounded on the Northern side by land bearing survey no.267/1 and on the Eastern side by 267/3. The survey map indicates that the respondent no.3's property is adjacent to the Shirol-Janapur Road. The suit property as described in the plaint, shows the suit land being bounded on the Northern side by Udgir-Shirol Janapur Road. *Prima facie* it appears from the survey map that, the property bearing no.267/2 is not adjacent on the Northern side to the Udgir-Shirol Janapur Road and in fact there is an intervening land i.e. survey no.267/1. Relying on the compromise pursis, learned counsel for Petitioner submits that in the said proceedings, the land of the Respondent No 3 is shown as bounded on north by Udgir-Kaulkhed Road, which submission is not sustainable as the compromise pursis shows the Respondent No 3 as owner of survey no.267/3, which is shown bounded towards North by the Udgir-Kaulkhed Road, and it is submitted by the learned counsel for respondent no.3 that the said road i.e. Udgir-Kaulkhed Road is the Udgir-Shirol-Kaulkhed Road. This submission has not been demonstrated to be an incorrect submission. In fact the compromise pursis shows that respondent no.3's land is on North-West corner of survey no.267/3 and the survey map, which is annexed to the affidavit-in-reply filed by respondent no.3 shows the Udgir-Janapur Road on the Northern side and as such, it appears that, it is the plot of respondent no.3, which is adjacent to the said road.

13. The application for amendment is required to be considered on the touchstone of Order I Rule 10 of the Code of Civil Procedure. In the case of ***M/s.Aliji Momonji & Company Vs. Lalji Mavji & others, JT 1996(7) S.C. 53*** the Apex Court while considering the question as to whether a party is a necessary or proper party under Order I Rule 10 of the Code of Civil Procedure has held that the only reason which makes it necessary to make a person a party to an action is that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party.

14. Applying the law laid down by the Apex Court, the facts of the present case are required to be considered. In the present case, it is the contention of respondent no.3 that the boundaries of his land are shown to be the boundaries of the suit property and this submission has been *prima facie* substantiated by the production of survey map, which shows that it is respondent no.3's land which bounded on the North by Shirol-Janapur Road and not the petitioners land. As the suit seeks declaration of ownership in respect of the suit property, which is described in the plaint, in my opinion, the outcome of the proceedings would definitely affect the rights of respondent no.3. A declaration of ownership of the suit property of the boundaries shown, which boundaries the respondent no.3 claims to be his suit boundaries would necessarily affect respondent no.3's right, title and interest. The respondent no.3, therefore, has a direct and substantial interest in the property and as such, the impugned order directing the impleadment of respondent no.3 cannot be faulted with. The Trial Court has observed that in order to

factually decide the dispute in controversy and that the rights of respondent no.3 will be affected, if any order is passed in respect of the suit claimed, as the property, which is adjacent to Udgir City has high market value. In my opinion, the rights of respondent no.3 is bound to be affected by the outcome of RCS No.696/2018, and as such the respondent no.3 is required to be impleaded as a party to the proceedings.

15. In light of the above, there is no merit in the petition. Writ Petition stands dismissed.

(SHARMILA U. DESHMUKH)
JUDGE