

CORRECTED ORDER

This order is corrected as per order speaking to the minutes order dated 05th December, 2023.

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

WRIT PETITION NO. 9978 OF 2021

Gangubai W/o. Vilas Dhone

....Petitioner

Versus

1. Akshay S/o. Bhimraj Jarhad
2. Nanibai Murlidhar Jarhad
3. Haribhau Murlidhar Jarhad
4. Bebi Haribhau Jarhad
5. Manjabapu Haribhau Jarhad
6. Bhimraj Murlidhar Jarhad
7. Kavita Bhimraj Jarhad
8. Vikas Bhimraj Jarhad
9. Ramesh Murlidhar Jarhad
10. Vidya Ramesh Jarhad
11. Vishal Ramesh Jarhad
12. Yogesh Ramesh Jarhad
13. Manisha Rajendra Harkal
14. Lakshmi Keshav Godase
15. Kalabai Rajendra Adhav
16. Lilabai Navnath Kurhe

....Respondents

...
 Advocate for Petitioner : Mr. Jaiswal Nikhil D.
 Advocate for Respondent Nos. 1 to 15 : Mr. Shaikh Tarek Mobin H.

...
CORAM : SHAILESH P. BRAHME, J.
Reserved on : 29th November, 2023
Pronounced on : 04th December, 2023

ORDER :

1. Heard both the sides finally at the admissions stage.
2. The petitioner is challenging order dated 01.08.2021, passed below exhibit 16 and judgment and decree dated 01.08.2021, passed in RCS No. 265 of 2021, by learned Civil Judge Senior Division, Newasa. The petitioner is a third party whose attempt to be impleaded failed.
3. The petitioner is the daughter of respondent no. 2 – Nanibai Murlidhar Jarhad. The respondent no. 1 – Akshay, filed suit for partition and possession against respondent no. 2 to 16. The respondents are the members of the family. Respondent no. 2 – Nanibai, has four sons and four daughters. All the siblings of Nanibai are impleaded as a defendants except present petitioner. Being daughter and coparcener she claims to have a right in the joint family property.
4. On 02.03.2021, the respondent no. 1 filed RCS No. 265 of 2021. On 20.03.2021, the parties filed Sulenama, terms of settlement at exhibit 10. They proposed to pass the compromise degree. The matter was referred to Lok Adalat.
5. The petitioner filed exhibit 16 to implead her as a party defendant. It is brought to the notice of the Court that thought she is

daughter of respondent no. 2 – Nanibai she has been excluded. Her application was not contested by any of the respondents. It was rejected by order dated 01.08.2021 holding that the petitioner is entitled to file separate suit to establish her right in respect of the suit lands. Simultaneously, in Lok Adalat a compromise decree was passed in terms of the settlement deed exhibit 10.

6. Learned counsel for the petitioner submits that the learned Judge totally overlooked that the petitioner is the daughter of respondent no. 2 – Nanibai. All other daughters and sons are impleaded in the suit but petitioner is deliberately excluded. The petitioner being coparcener is entitled to have share in the suit land. She is not only necessary party but proper party. Learned counsel for the petitioner submits that the application exhibit 16 filed by the petitioner has not been objected by any of the respondents. Therefore, it is undisputed that she is daughter of respondent no. 2 – Nanibai. The learned counsel submits that it is perversity and totally against the principles of natural justice to reject her application and to pass the compromise decree.

7. Learned counsel for the respondent supports impugned order and decree. He has vehemently submitted that the petitioner has to establish her entitlement by preferring appropriate proceedings. According to him, the respondents have not admitted her claim or the relationship with Nanibai. He further submits that no prejudice would be caused as the petitioner has been given liberty to file separate suit.

8. I have considered the rival submissions canvassed by the learned counsel across the bar. The petitioner filed application exhibit 16 under Order I Rule 10 of CPC in the suit. No say is filed by the respondents. For the first time in the High Court, the respondents are disputing the claim of the petitioner and her relationship with them. This particular conduct is after thought and callous.

9. From the array of the parties of the suit it is evident that all the sons and the daughters of respondent no. 2 - Nanibai are impleaded except the petitioner. The respondents have unable to explain any reason for excluding the petitioner. When other married daughters like Lakshmibai, Kalabai and Lilabai, are impleaded as defendant nos. 13, 14 and 15, respectively, then the petitioner has equal right. She has been discriminated by not making her party to the suit. Pertinently, the application exhibit 16 is supported by affidavit. There is material on record to infer that petitioner is the daughter of respondent no. 2 – Nanibai. She is a necessary party and she has right in the suit land along with other members of the family.

10. The learned Judge has rejected application exhibit 16 by non-speaking and cryptic order. The entitlement of the petitioner, her status and the right as stated in the application exhibit 16 have not at all been considered. It is perversity to hold that as there was compromise between the parties therefore, the petitioner is entitled to challenge the decree by filing separate suit. In the given scenario filing of separate suit

is not a remedy. The petitioner has unnecessarily been dragged to further litigation by rejecting her application.

11. The submissions of the learned counsel for the respondent that there are disputed questions of facts and the petitioner has to establish her entitlement in a full fledged suit cannot be countenanced. It is sheer negligence of the Trial Court to reject her claim and hurriedly pass the compromise decree. Just because parties have arrived at compromise and the matter is referred to Lok Adalat does not mean that legitimate claims of a necessary parties can be overlooked. I am of the considered view that the petitioner has made out a case to interfere with the impugned orders.

12. The petitioner is relying upon the judgment rendered in the matter of *Devchand Constructions Versus Board of Trustees of the port of Mormugao and another*, **2006 (5) Mh.L.J. 644**. Paragraph no. 18 is as follows :

“18.As a matter of fact, the recent judgment of the Apex Court in the case of *Amit Kumar* (supra) has diluted the test to be applied while adding the person as a party to the proceedings. The Court went to the extent of saying that the power of the Court to add party cannot depend solely on the question whether he has interest in the suit property what is required to be seen is whether he

would suffer any prejudice, if he is not allowed to participate in the suit.”

13. The petitioner is suffering grave prejudice. Therefore, she has been given liberty to file suit. In view of the above, I am inclined to allow the Writ Petition by passing following order :

ORDER

- i. The order dated 01.08.2021 below exhibit 16 and compromise decree in RCS No. 265 of 2021 passed by learned Civil Judge Senior Division, Newasa, are quashed and set aside.
- ii. The application exhibit 16 submitted by the petitioner stands allowed and the respondents are directed to implead her as party respondent.
- iii. RCS No. 265 of 2021 which was pending before Civil Judge Senior Division, Newasa, shall stand reopened and restored to its original position.
- iv. The writ petition is accordingly, allowed.
- v. There shall be no order as to costs.

[SHAILESH P. BRAHME, J.]