

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

WRIT PETITION NO.37 OF 2023

**DHRUPADABAI NANA KALE
VERSUS
GAJANAN KISAN KALE AND OTHERS**

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Mr. Navin S. Shah h/f Mr. Swapnil S. Patil, Advocate for the
Petitioner.

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**CORAM : SHARMILA U. DESHMUKH, J.
DATED : 19th JANUARY, 2023.**

PER COURT:-

1. Heard.

2. The petitioner is aggrieved by the order dated 16.09.2022 passed by the Trial Court in RCS No.500/2017, whereby the application preferred by the petitioner for transposing respondent nos.6 to 14 herein as co-plaintiffs came to be rejected. The RCS No.500/2017 has been filed by respondent nos.1 to 5 as against the petitioner and respondent nos.6 to 14 seeking partition and separate possession, as also challenging the sale deed executed by the predecessor of the respondents in favour of the petitioner dated 24.09.1979.

3. The application has been preferred by the petitioner on an apprehension that respondent nos.6 to 14 are in collusion with respondent nos.1 to 5 and as such are likely to prejudice the rights of the petitioners in the suit. It was further contended that the suit is for partition and respondent nos.6 to 14 are also co-

owners of the suit properties and as such, no prejudice will be caused to the respondents in event respondent nos.6 to 14 are transposed as co-plaintiffs in the suit.

4. Learned counsel for the petitioners has reiterated the submissions made in the application. In support of his submissions, the learned counsel has relied upon the decisions in case of ***R. S. Maddanappa (Deceased) after him by his Legal Representative Vs. Chandramma, reported in 165 GoJuris (SC) 65*** and ***Irapawwa @ Irawwa and Others Vs. Channabasawwa and Others, reported in ILR 2004 KAR 5130***. In so far as the decision in the case of ***Irapawwa @ Irawwa and Others Vs. Channabasawwa and Others*** (supra) is concerned, in that case there was no objection on behalf of the plaintiff for transposing defendant no.7 therein as a co-plaintiff and as far as the decision in a case of ***R. S. Maddanappa (Deceased) after him by his Legal Representative Vs. Chandramma*** (supra) is concerned, in that case the first defendant had admitted the plaintiff's title to the half share in the property and also claimed decree in her favour to the extent of remaining half share and in the facts of that case the Apex Court has held that in order to do complete justice between the parties, the first defendant could have been transposed as a co-plaintiff.

5. In the present case, the fact situation is completely different in as much as respondent nos.1 to 5 have filed the suit for partition as against respondent nos.6 to 14 and the petitioner, as far as the petitioner is concerned only to the extent of claiming relief of cancellation of sale deed executed in favour of the petitioners. The settled position is that the plaintiffs are '*Dominus*

Litis' and cannot be compelled to join respondents i.e. defendants as the co-plaintiffs.

6. In my view, the apprehension which has been expressed by the learned counsel for the petitioner is unfounded in as much as the rights of the petitioner is not curtailed and no prejudice will be caused as the petitioner will be entitled to examine the respondents/plaintiffs and that will to cross-examine the respondents/plaintiffs.

7. A perusal of the order shows that the trial is now fixed for cross-examination of the plaintiffs and at the stage the application has been preferred. In my opinion, merely on the basis of the apprehension, the present application could not have been filed and considering the settled position that, the plaintiff being a carriage of the proceedings is entitled to select as the party as against the relief being claimed. As such, respondent nos.1 to 5 cannot be compelled to join the other respondent nos.6 to 14 as a co-plaintiffs.

8. For the reasons aforesaid, there is no merit in the writ petition and the same is accordingly dismissed.

(SHARMILA U. DESHMUKH)
JUDGE