

VRJ

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.9085 OF 2022

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Shantaram Dattaram Ravan & Ors. ... Petitioners

V/s.

Eknath Ramchandra Bandabe & Ors. ... Respondents

Mr. Suresh M. Kamble for the petitioners.

Mr. Subhash Bane for respondent Nos.1 and 10.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 7, 2023

P.C.:

1. By this writ petition under Article 227 of the Constitution of India, the petitioners who filed an application under Order 1 Rule 10 of the Civil Procedure Code, 1908 to implead themselves as party to the suit. Their application is rejected.

2. The respondent No.1 is original plaintiff who filed a suit for partition and separate possession of suit properties as serial No.1 to 13. According to the respondent No.1-original plaintiff, suit properties are tenanted properties in possession of the plaintiff and the defendants. According to the plaintiff, suit properties are inam lands. The names of the predecessor-in-title of the plaintiff and the defendants were entered in revenue extract. Some suit properties are in possession of defendant Nos.24, 25, 26, 31, 42. The

defendant Nos.10 and 42 are made parties as their names are entered in revenue record. According to the plaintiff, therefore, the plaintiff and the defendant Nos.1 to 6 have rights over the suit properties which requires to be partitioned and each co-sharer needs to be put in separate possession.

3. The petitioners who claimed to be villagers of concerned village have filed application under Order 1 Rule 10 of the Civil Procedure Code, 1908, alleging that revenue entry in the name of predecessor-in-title of the plaintiff and the defendant Nos.1 to 6 was for and on behalf of village as a whole. The plaintiff and all remaining defendants are cultivating the suit properties jointly. Since, the entry in the name of predecessor-in-title of the plaintiff and the defendants was for and on behalf of village, their suit for partition of suit properties cannot be decreed.

4. The Trial Court rejected said application holding that the petitioners have failed to prove documentary evidence in support of their right over the suit properties.

5. In my opinion, considering the nature of right claimed by the plaintiff that predecessor of the plaintiff and the defendant Nos.1 to 6 was in cultivation of suit properties as a tenant and the contention raised by the petitioners that such entry was for and on behalf of village as the suit properties are inam lands, needs to be adjudicated by the Court after giving petitioners right to lead evidence to support their case. The consideration for adjudication of rights under Order 1 Rule 10 in relation to private rights of private individual is different than the rights where dispute is in

relation to right of a village. In a suit where there is necessity of adjudication as regards right of villagers as a whole is concerned, each villager has a right to participate in such dispute. Therefore, the Trial Court was not justified in rejecting the application. Hence, following order:

- a) The impugned order dated 1st December 2020 passed by Joint Civil Judge, Junior Division, Rajpur in R.C.S. No.48 of 2016 is quashed and set aside.
 - b) The application below Exhibit-55 R.C.S. No.48 of 2016 is allowed.
6. The civil writ petition is disposed of. No costs.

(AMIT BORKAR, J.)