

Nikita

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

WRIT PETITION NO.178 OF 2023

Uttam Dattu Bhosale (Molane) and Ors. ... Petitioners

V/s.

Vitthal Rangnath Bhosale (Molane) Thr.
PoA Ashok Vitthal Bhosale (Molane) and
Ors. ... Respondents

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Mr. Ashok M. Misal for the petitioners.

Mr. Prabhakar M. Jadhav for respondent Nos.1 to 5.

Mr. A.P. Vanarse, AGP for respondent No.6/State.

Mr. Bhalchandra S. Shinde i/by Mr. Pandurang
Gaikwad for respondent No.8.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 31, 2023

PC.:

1. The petitioner/original plaintiff is challenging order dated 18th July 2022 allowing application under Order 1 Rule 10 of the Code of Civil Procedure, 1908 in a suit seeking return of property and possession of suit property.

2. According to plaintiffs, their predecessors in title i.e. Rakhuamabai had executed a registered lease deed in favour of defendant No.4, for period of 30 years. After expiry of 30 years, defendant No.4 did not return the property. Hence they filed an application with defendant No.4 for return of property and on

refusal they filed suit for return of property and for possession of suit property.

3. In the said suit, other legal representatives of Rakhumabai filed an application under Order 1 Rule 10 of the CPC to join them as plaintiffs in the suit. By the impugned order Trial Court allowed the application.

4. According to the petitioner, legal representatives (proposed plaintiffs) are not necessary as the cause of action for filing the suit is application filed by the plaintiffs seeking return of property which the proposed defendants have not filed and, therefore, they have no right to be join as party in the suit.

5. On perusal of the plaint, it appears that the cause of action for filing the suit is execution and registration of lease deed for period of 30 years and thereafter refusal on the part of the defendant No.4 to return the property. Filing of an application will not furnish cause of action in its strict sense. However, at the most filing of an application may furnish part of a cause of action. Therefore, in my opinion, once it is satisfied by the proposed plaintiffs that they are legal representatives of Rakhumabai, they are necessary parties in the suit and, therefore, they need to be joined as plaintiffs.

6. By the impugned order, the Trial Court allowed application to add them as plaintiffs. However, addition of applicants as plaintiffs would embarrass the trial as both sets of plaintiffs will have to engage different advocates and such course is not permissible in view of judgment of Apex Court in the case of

Venkatrao A. Pai v. Narayan Bansilal reported in AIR 1961 Bombay page 94.

7. Therefore, it would be in the interest of justice that the proposed plaintiffs be added as defendants in the suit. Therefore, the impugned order is modified by directing plaintiffs to add proposed plaintiffs as defendants in the suit.

8. Subject to aforesaid modification, the writ petition stands dismissed. No costs.

(AMIT BORKAR, J.)