

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**WRIT PETITION NO.11847 OF 2019**

Jagan @ Jagannath Pandu Jadhav

...Petitioner

**Versus**

Gopinath Bhiwa Jadhav & Ors.

...Respondents

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*Ms. Namarta S. Bobade for the Petitioner.*

*Ms. Vandana P. Santara, through legal aid for Respondent Nos. 1 to 6.*

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**Coram : Sharmila U. Deshmukh, J.**

**Date : June 23, 2023.**

**P. C. :**

1. Heard Ms. Bobade, learned counsel appearing for the Petitioner and Ms. Santara, learned counsel appearing for Respondent Nos. 1 to 6.

2. The challenge in the petition is to the order dated 7<sup>th</sup> August, 2019 permitting the respondent Nos. 1 to 6's application for impleadment as party in Regular Civil Suit No. 284 of 2018, instituted by the Petitioner seeking partition and separate possession of the property bearing survey no. 93/4. The contention of the learned counsel for the Petitioner is that the said property belongs to their

common ancestor Mahadu Mahar which was being cultivated by Petitioner's father Pandu Mahadu Mahar and in the year 1953, 32G certificate has been issued in favour of the Petitioner's father. She would therefore urge that Respondent Nos. 1 to 6 have no right in the property. In support of her contention, she placed reliance on the Death Certificate and Village Form No. 6 to show that the property was gifted to one Khatunbibi Abdul Rahiman Aadal and subsequently the property was being cultivated by Petitioner's father which resulted in 32G certificate being issued in the name of the father of the petitioner.

3. To counter the submissions, learned counsel appearing for Respondent Nos. 1 to 6 points out the agreement dated 19<sup>th</sup> June, 2018 annexed at page No. 62 of compilation of documents and would contend that the family members of the Petitioner have accepted that Respondent Nos. 1 to 6 were common ancestor of Mahadu Mahar and they are all entitled to share therein.

4. Considered the submissions of the parties. The application has been filed for impleadment and has to be tested on the touchstone of Order 1, Rule 10 of CPC. It is well settled that the party who has direct and substantial interest in the subject property, is required to be impleaded as party to the proceedings

5. The contention of the learned counsel appearing for the Petitioner is that the property was being cultivated by his father and that the common ancestor of respondent Nos. 1 to 6 i.e. Mahadu had nothing to do with the property. It is not disputed that the Petitioner's father and the Respondent Nos. 1 to 6's father were part of the joint family. It is the specific contention of Respondent Nos. 1 to 6 that even if 32G certificate was in the name of the Petitioner's father, the land was being cultivated jointly. Respondent Nos. 7 to 14 have entered in to the agreement dated 19<sup>th</sup> June, 2018 which acknowledges that the subject property belongs to their common ancestor Mahadu. That being so, it cannot be said that the Respondent Nos. 1 to 6 do not have any interest in the subject property and that their rights would not be affected.

6. Considering that the outcome of the proceedings will affect the rights of Respondent Nos. 1 to 6, they are required to be impleaded to the proceedings. In view thereof, there is no infirmity in the impugned order impleading Respondent Nos. 1 to 6 as party to Regular Civil Suit No. 284 of 2018. The Writ Petition is devoid of merits and stands dismissed.

7. Needless to state that the observations made herein are only for the purpose of testing the validity of the impugned order and the

Trial Court to decide the suit on its own merits and uninfluenced by the observations made herein.

**[Sharmila U. Deshmukh, J.]**