

AGK

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

WRIT PETITION NO.13244 OF 2023

Kondiba Arjun Kapre, since
deceased through LRs & Ors.

... Petitioners

V/s.

Mathu Govind Pokharkar & Ors.

... Respondents

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Mr. Jaydeep Deo for the petitioners.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 26, 2023

PC.:

1. By this writ petition under Article 227 of the Constitution of India, the petitioner/original defendant No.1 is challenging order dated 4 September 2023 passed by the Appellate Court rejecting petitioner's application to add proposed respondent Nos.7 and 8 in the appeal under Order 1 Rule 10 of the Code of Civil Procedure, 1908.

2. Respondent No.1 filed Regular Civil Suit No.102 of 1989 for removal of encroachment in relation to property described in paragraph 1 of the plaint. On 29 November 1994 said suit was decreed. In an appeal filed by the petitioners, the Appellate Court remanded the matter back to the Trial Court. The Trial Court on 30 November 2013 decided the suit after remand.

3. The petitioner filed Civil Appeal No.61 of 2014 challenging judgment and decree dated 30 November 2013. In the said appeal, the petitioners filed application below Exhibit 50 to add heirs of Nathu Genu Mohite as respondent Nos.7 and 8 and further request was made to remand the case. The Appellate Court by the impugned order rejected the application.

4. On perusal of the issues framed by the Trial Court, it appears that issue No.3 cast burden on the plaintiff to prove as to whether defendant No.1 has encroached over the suit land to the extent of 30-R. If the plaintiff is able to prove the said issue, necessary orders will be passed by the Court in accordance with answer to the said issue. The Lower Appellate Court has rightly observed that there is nothing brought on record to hold that proposed respondent Nos.7 and 8 are necessary parties. The Trial Court has not framed issues regarding non-joinder of necessary party. Therefore, the Lower Appellate Court rightly held that such respondent Nos.7 and 8 cannot be added during pendency of the appeal.

5. There is no error of jurisdiction. The writ petition is, therefore, dismissed. No costs.

(AMIT BORKAR, J.)