

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 45 OF 2023

Wasudeo Kodumal Kemchandani and ors__ Vs. __Pawankumar Shivnarayan Saraiyya
thr L.Rs and ors

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mrs. Ayushi Tripathi, Advocate for petitioners
Mr. C.S.Kaptan, Senior Advocate assisted by Mr. K.PMahalle, advocate for
respondents

CORAM : AVINASH G. GHAROTE, J.
DATE : 31/03/2023

1] Heard Mrs. Tripathi, learned counsel for the petitioners & Mr. Kaptan, learned senior counsel for the respondents.

2] The petition challenges the order dated 7.10.2022 below Exh.31, whereby the application under Order 22 Rule 10 of C.P.C., seeking to implead the assignee of the suit property from the appellant as an additional appellant, has been rejected.

3] Mrs. Tripathi, learned counsel for the petitioner submits that in view of the language of Order 22 Rule 10 of C.P.C., since the person to be added is an assignee under the deed of assignment dated 25.10.2018 of the rights of the appellant in

respect of the suit property, it is necessary to implead him as an appellant in addition to the original appellant, as having acquired right under the deed of assignment, he is entitled to protect his interest.

4] Mr. Kaptan, learned senior counsel for the respondents opposes the submission and contends that the deed of assignment does not confer any right upon the persons sought to be impleaded, who is a transferee pendite lite and would be bound by the result in the appeal.

5] The provisions of Order 22 Rule 10 of C.P.C., permit an assignee with a leave of the Court to continue the suit or the appeal, which is with an intention to protect his interest in the property, which is the subject matter on account of the assignment. In **Dhurandhar Prasad Singh vrs. Jai Prakash University and ors**, (2001) 6 SCC 534, while considering this position, the Hon'ble Apex Court has held that in case an application for leave is filed on account of an assignment, it would be appropriate to implead the assignee, as in a given case, the original appellant may not contest the litigation and thereby adversely affect the right of the assignee. In the instant case, it is the assignee

who has filed application for impleadment, and in the light of what has been held above in **Dhurandhar Prasad Singh** (supra), the application ought to have been allowed. The impugned order is hereby quashed and set aside and the application below Exh. 31 is allowed.

6] Mrs. Tripathi, learned counsel for the petitioners upon instructions undertakes to get the appeal decided as the early as possible.

JUDGE

Rvjalit