



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.1250 OF 2018

1. Vimalbai Gangaram Shingade
Age : 70 years, Occu. Agril.,
R/o.: Adhala, Tq. Kallam,
District : Osmanabad.
2. Mathurabai Baburao Raut
Age : 65 years, Occu. Agril.,
R/o.: Adhala, Tq. Kallam,
District : Osmanabad.

.... **PETITIONERS**
(Orig. defendant Nos.1 & 2,
Respondent No.1 & 2 in
RCA No.5 of 2012)

VERSUS

1. Bhagirtivbai Rakhmaji Wayse
Age : 75 years, Occu. Agril.,
R/o.: Adhala, Tq. Kallam,
District : Osmanabad.
2. Lahu Rakhmaji Wayse
(Died, through LR)
- 2.1 Ramalbai Lahu Wayse
Age : 57 years, Occu. Agril.,
R/o.: Adhala, Tq. Kallam,
District : Osmanabad.
- 2.2 Kailas Lahu Wayse
Age : 42 years, Occu. Agril.,
R/o.: Adhala, Tq. Kallam,
District : Osmanabad.
- 2.3 Vilas Lahu Wayse
Age : 39 years, Occu. Agril.,
R/o.: Adhala, Tq. Kallam,
District : Osmanabad.
- 2.4 Sarina Vijaykumar Hare

Age : 37 years, Occu. Agril.,
R/o.: Adhala, Tq. Kallam,
District : Osmanabad.

3. Yuvraj Rakhmaji Wayse
Age : 50 years, Occu. Agril.,
R/o.: Adhala, Tq. Kallam,
District : Osmanabad.
4. Ravindra Rakhmaji Wayse
Age : 48 years, Occu. Agril.,
R/o.: Adhala, Tq. Kallam,
District : Osmanabad.
5. Jaichand Rakhmaji Wayse
Age : 45 years, Occu. Agril.,
R/o.: Adhala, Tq. Kallam,
District : Osmanabad.
6. Dhondabai Shivaj Wayse
(Died, through Lrs)
- 6.1 Balaji Shivaji Wayse,
Age : 36 years, Occu. Agril.,
R/o.: Adhala, Tq. Kallam,
District : Osmanabad.
- 6.2 Vanita Dadasaheb Bharane
Age : 31 years, Occu. Agril.,
R/o.: Bharanewadi, Tq. Indapur,
District : Pune
- 6.3 Mahor Kishor Sangale
Age : 28 years, Occu. Household,
R/o.: Rajuri, Tq. Phaltan,
District : Satara
7. Shivaji Sahebrao Patil
Age : 60 years, Occu. Agril.,
R/o.: Ketur, Tq. Karmala
District : Solapur
8. Dadasaheb Sahebrao Patil
Age : 57 years, Occu. Agril.,

R/o.: Ketur, Tq. Karmala
District : Solapur

9. Chandrakant Sahebrao Patil
Age : 60 years, Occu. Agril.,
R/o.: Ketur, Tq. Karmala
District : Solapur
10. Bapusaheb Sahebrao Patil
Age : 60 years, Occu. Agril.,
R/o.: Ketur, Tq. Karmala
District : Solapur
11. Padminibai Manohar Wayse
Age : 65 years, Occu. Agril.,
R/o.: Khandavi, Tq. - Karjat,
District : Ahemadnagar
12. Dagdabai Mahadev Malshikare
Age : 68 years, Occu.: Agril.,
R/o.: Parwadi, Tq. Baramati,
District : Pune

.... RESPONDENTS
(Resp. No.1 to 5 are original
plaintiff, Respondent No.6 is
original defendant No.3,
Respondent Nos.7 to 12 are
Respondent Nos.4 to 12 are
Respondent Nos.4 to 9 in
RCA No.5 of 2012)

.....
Mr. V. D. Salunke h/f Mr. Amol T.Jagtap, Advocate for the
petitioners
Mr. S. R. Kedar, Advocate for Respondent Nos.1 to 5 & 8 to 12
Mr. D. H. Jadhavar, Advocate for Respondent No.6
.....

**WITH
APPEAL FROM ORDER NO.57 OF 2017
WITH
CIVIL APPLICATION NO.14253 OF 2017**

1. Vimalbai Gangaram Shingade
Age : 70 years, Occu. Agril.,
R/o.: Adhala, Tq. Kallam,

District : Osmanabad.

2. Mathurabai Baburao Raut
Age : 65 years, Occu. Agril.,
R/o.: Adhala, Tq. Kallam,
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Mr. D. H. Jadhavar, Advocate for Respondent No.6

.....

CORAM : SANDIPKUMAR C. MORE, J.

DATED : 14/03/2024.

JUDGMENT :

1. Both the aforesaid proceedings have been filed by the appellants Vimalbai and Mathurabai, who are the original defendant Nos.1 & 2 in RCS No.287 of 1991 and respondent Nos.1 & 2 in RCA No.5 of 2012, against present respondent Nos.1 to 5, who are the plaintiffs in the aforesaid suit and respondent Nos.7 to

12, who are the interveners of the aforesaid appeal. Respondent No.6 is original defendant No.3 in the aforesaid suit. The Writ Petition No.1250 of 2018 is filed against the order below Exhibit-30, dated 31/08/2017 passed by the learned first appellate court i.e. District Judge-1, Osmanabad in RCA No.5 of 2012 whereby respondent Nos.7 to 12 have been added as respondent Nos.4 to 9 in aforesaid appeal. Similarly, Appeal from Order No.57 of 2017 has been filed by original defendant Nos.1 & 2, challenging the final judgment and order passed by the learned first appellate court on 06/10/2017 whereby the original judgment and decree in RCS No.287 of 1991, was set aside and matter was remanded back to the trial court to decide the said suit afresh by permitting the present respondent Nos.7 to 12 -interveners to file their written statement.

2. The learned counsel for the appellants as well as the petitioners in both the proceedings vehemently argued that there is a long history of litigation between the parties and the present respondent Nos.1 to 5, who are original plaintiffs claiming their right through one Rakhamaji, have already failed to prove their right over the suit property i.e. land Gut No.105, admeasuring 7 acres 2 R, situated at Adhala, Tq. Kallam, District : Osmanabad in

RCS No.287 of 1991. Even Rakhamaji had also failed to establish his right over the suit property in the civil litigation initiated by him. According to him, Rakhamaji had failed up to this court and the decree in earlier RCS No.10 of 1970 attained finality. According to him, the present interveners, who are respondent Nos.7 to 12, are in fact claiming right in the suit property against the present appellants / petitioners through one Sahebrao and they had in fact filed separate suit for the said cause, which got dismissed due to their own negligence. He further pointed out that the learned first appellate court should not have remanded the matter to the trial court on the ground of giving opportunity to present respondent Nos.7 to 12 – interveners as the decree in the aforesaid suit was in respect of dispute between the appellants / petitioners and the present respondent Nos.1 to 5 – original plaintiffs.

3. On the contrary, the learned counsel for the respondent Nos.7 to 12 – interveners supported the judgment of the learned first appellate court in RCA No.5 of 2012 and claimed that since the interveners are having independent right, they must be given an opportunity to contest their claim on merit.

4. Heard rival submissions. Also perused documents on record.

5. Admittedly, there is a long history of litigation between the parties except the interveners, which can be summarized as follows:

For avoiding the ambiguity, I have referred the parties as per their original status in the suit and referred the present respondent Nos.7 to 12 as interveners. The record shows that plaintiffs – Bhagirathbai and other four had filed a suit for declaration of their ownership over the suit property and also for declaring that decree passed in earlier RCS No.10 of 1970 was not binding upon them. They also claimed perpetual injunction against the defendants. The plaintiffs had claimed that the suit land was originally owned by their predecessor in title Rakhamaji Baburao Patil and after his death, they got possession of the suit land as owner. According to them, the defendants had no concern with the suit property, but by joining hands with revenue officers, they got their names entered in record of rights of the suit land vide Mutation Entry No.7. Thereafter, they preferred Appeal No.67/RTS/69 against that entry, wherein compromise took place between themselves and defendant No.3. According to them, deceased Parubai, who is the

mother of defendant Nos.1 & 2, had limited share in the suit land only till her life time. But as per the decree in RCS No.10 of 1970 the defendants tried to obstruct possession of the plaintiffs over the suit property and therefore, the plaintiffs claimed that decree in the said suit was not binding upon them and therefore, filed the instant suit i.e. RCS No.287 of 1991.

6. The record further shows that the learned trial court after considering the entire evidence on record has dismissed the said suit of the plaintiffs by observing that defendant Nos.1 and 2 were the owners of the suit land and the plaintiffs could not establish their title over the suit land. The learned trial court also held that the suit is barred by principle of *res-judicata*. Against the said decree, Appeal from Order No.57 of 2017 has been filed by the plaintiffs for re-agitating their claim over the suit land. However, during pendency of that appeal, the interveners filed an application Exhibit-30 in the said appeal and vide order dated 31/08/2017 the learned first appellate court allowed the interveners to join as respondent Nos.4 to 9 in the appeal. After that, the learned first appellate court heard said appeal and with a view to give an opportunity to the interveners, remanded the matter back to the

learned trial court by setting aside judgment and decree in RCS No.287 of 1991.

7. It is significant to note that the learned first appellate court has framed following points by giving findings thereon:

POINTS	FINDINGS
1. Whether plaintiffs proved their lawful title and possession over the suit land?	Redundant
2. Whether plaintiffs proved the decree in R.C.S. No.10/70 is illegal and fraudulent?	Redundant
3. Whether suit is barred by principle of resjudicata?	Redundant
4. Whether plaintiffs are entitled to declaration of their title to suit land, possession and non enforceability of decree in R.C.S. No.10/70?	Redundant
5. Whether plaintiffs are entitled to perpetual injunction as sought?	Redundant
6. Whether the impugned judgment and decree needs interference?	Yes.
7. What order and decree ?	Appeal is allowed. Matter is remanded.

Thus, it appears that the learned first appellate court did not consider any of the aforesaid points on merit but only remanded the matter by observing that unless the interveners – the then

respondent Nos.4 to 9, are heard the dispute between the parties could not be adjudicated properly.

8. It is extremely important to note that the original suit RCS No.287 of 1991 was between plaintiffs and defendants, wherein the plaintiffs have claimed right over the suit land through one Rakhamaji. Further, defendants had also filed RCS No.10 of 1970 for injunction against father of the plaintiffs namely Rakhamaji, who was trying to obstruct their possession. The said suit was decreed on 28/02/1972. Against the said decree, an appeal filed by Rakhamaji i.e. RCA No. 33 of 1972 also got dismissed. Not only this, but the Second Appeal No.403 of 1975 filed by Rakhamaji also got dismissed on 24/07/1975 in this court. Thus, it appears that decree passed in RCS No. 10 of 1970 had attained finality. Further, it is also important to note that Rakhamaji had also filed one suit bearing RCS No.52 of 1961, wherein compromise took place and in that compromise Rakhamaji had accepted the possession of Parubai i.e. mother of the present defendant Nos.1 & 2 over the suit property. Thus, it appears that the plaintiffs, who are present respondent Nos.1 to 5 in both the proceedings are claiming right over the suit property by way of second round of litigation, which has been terminated by the learned trial court.

9. Though the interveners are claiming right over the suit land, but their claim of ownership over the suit land is entirely different than the claim of plaintiffs in the present matter. By way of application Exhibit-30, they have claimed that Parubai had in fact sold certain area of the suit land to one Sahebrao Sakharam Patil i.e. their father by way of sale deed dated 23/08/1973. According to them, one of the survey numbers from which the suit land is converted in to gut number, was sold by Parubai to Sahebrao and the said sold area is still in their possession. It is extremely important to note that the interveners had in fact filed RCS No. 56 of 2014 for declaration and possession of the part which was allegedly purchased by their father Sahebrao. However, the said suit got dismissed in default on 10/09/2018 only due to their inaction to prosecute the same. Thus, the claims of the plaintiffs as well as interveners in respect of the suit land against defendant Nos.1 & 2 are independent of each other. The plaintiffs are claiming right over the entire suit land through Rakhamaji whereas the interveners are claiming right over part of the suit land through one Sahebrao. The learned first appellate court considering the claim of interveners through Sahebrao appears to have permitted them to join the appeal as respondent Nos.4 to 9, only with a view to grant them an opportunity for contesting their claim on merit

and has remanded the matter back to the trial court by setting aside the impugned decree. It is also important to note that the learned first appellate court has not given any finding in respect of the dispute between plaintiffs and defendant Nos.1 & 2.

10. Now even if it is presumed that the act awarding an opportunity to interveners is proper, then also no purpose will be served by remanding the matter back to the trial court because the original suit was filed by the plaintiffs to prosecute their claim over the suit land through Rakhamaji and in the said suit the interveners would be defendants only. They would be unable to prosecute their claim through Sahebrao against defendant Nos.1 & 2, who are co-defendants as it is settled position that except in the suit for partition, *interse* dispute between the defendants cannot be adjudicated even by way of counter claim when the suit is filed by plaintiff for their independent cause. The learned first appellate court has definitely missed this aspect. It is significant to note that the interveners can separately prosecute their claim through Sahebrao, which is independent of the claim of the plaintiff by restoring their own suit i.e. RCS No.56 of 2014.

11. It is a cardinal principle of law that if the evidence on record is sufficient, the appellate court can adjudicate the dispute between the parties on the basis of that evidence only. Here in this case, the learned first appellate court has not uttered a single word in respect of the dispute between plaintiffs and defendant Nos.1 & 2 on merit, but erroneously remanded the matter back for giving an opportunity to interveners whose claim against defendants is based on entirely different story and cause of action. As such, order of the learned first appellate court in RCA No.5 of 2012 of remanding the matter back to the trial court by setting aside the impugned decree therein is definitely illegal and perverse and needs to be set aside. So far as addition of interveners as respondents in the said appeal vide order dated 31/08/2017 below Exhibit-30 is concerned, the inclusion of the present interveners in the appeal, appears reasonable only being the watch-dogs. However, by such addition, redressal of grievance of the interveners by way of remand can not be done as it is not at all permissible. Considering all these aspects though the inclusion of the interveners in the appeal appears proper to some extent but the remand of the matter was definitely illegal and perverse. In view of the same, following order is passed.

ORDER

1. The Writ Petition No.1250 of 2018 stands dismissed. However, the Appeal from Order No.57 of 2017 stands partly allowed and the order of the learned first appellate court dated 06/10/2017 in RCA No.5 of 2012 stands quashed and set aside.
2. The learned first appellate court is directed to decide the RCA No.5 of 2012 in respect of the dispute between the appellants (plaintiffs) and respondent Nos.1 & 2 (defendant Nos.1 & 2) independently on the basis of evidence on record, expeditiously and preferably within six months from the receipt of this order.
3. Pending Civil Application No.14253 of 2017 is accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)