



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

909 WRIT PETITION NO. 11502 OF 2024

**BAJRANG UMRAO CHAVAN AND ANOTHER
VERSUS
BHARAT MARUTI CHAVAN AND OTHERS**

...
Advocate for the petitioners : Mr.Manoj U. Shelke

...

CORAM : ARUN R. PEDNEKER, J.

DATE : 15.10.2024

P.C. :

1] By the present petition, the petitioners challenge the order dated 20.07.2024 passed by the 4th Joint Civil Judge Senior Division, Dharashiv [Osmanabad] in Regular Civil Suit No.58/2023 below Exh.18 whereby the trial Court rejected the application for impleadment in the suit.

2] Heard the learned counsel for the petitioners.

3] Respondent no.1–original plaintiff filed RCS No.58/2023 against respondent nos.2 and 3 for permanent

injunction. The suit property is mentioned at para no.4 of the said suit, as under :

"४) हे की, दावा जमीनीचा तपशिल खालीलप्रमाणे-

मौजे बुकनवाडी ता.जि.उस्मानाबाद येथील जमीन गट क्र.१५८ एकुण क्षेत्र ०१ हे.०७ आर आकार रु.०२.५८ पैसे असुन सदर जमीनीच्या चतुः सिमा खालीलप्रमाणे-

पुर्वेस :- मधुकर विश्वनाथ चव्हाण
पश्चिमेस :- बिभिषण चव्हाण
दक्षिणेस :- पळसप शिव
उत्तरेस :- हरी सोपान पडवळकर"

4] The prayer clauses made in the said suit are as under :

तरी विनंती की

वादीचा दावा खालीलप्रमाणे मंजूर करण्यात यावा

अ. हे की, मौजे बुकनवाडी ता.जि.उस्मानाबाद येथील जमीन गट क्र. १५८ एकुण क्षेत्र ०१ हे. ०७ आर आकार रु.०२.५८ पैसे असुन सदर जमीनीच्या चतुः सिमा खालीलप्रमाणे-

पुर्वेस :- मधुकर विश्वनाथ चव्हाण
पश्चिमेस :- बिभिषण चव्हाण
दक्षिणेस :- पळसप शिव
उत्तरेस :- हरी सोपान पडवळकर

या दावा जमिनीवरील वादीचे कब्जेवहिवाटीस प्रतिवादीने अथवा त्यांच्या तर्फे अन्य कोणी हरकत करु नये म्हणुन वादी यांच्या हक्कात आणि प्रतिवादी यांच्या विरुध्द कायमस्वरुपी मनाई देण्यात यावी.

ब. हे की, दाव्याचा खर्च वादीस प्रतिवादीकडुन देववावा.

क. हे की, दाव्याच्या अनुषंगाने वादीस इतर जो काही न्याय मिळणे शक्य असेल तो ही देण्यात यावा.

5] Thereafter on 18.03.2023, petitioner filed an application for impleadment contending that he would be affected by the final order in the suit more particularly if any measurement is carried out of suit property. The trial

Court has rejected the said application by order dated 20.07.2024. By order dated 20.07.2022, the trial Court has observed as under :

04. दावा मिळकतीच्या नमूद चतुःसिमेमध्ये त्रयस्थ अर्जदार यांची नावे दिसून येत नाहीत अथवा ते शेतशेजारी असल्याचे दिसून येत नाही. वादी यांना सदर त्रयस्थ अर्जदार यांचेविरुद्ध कसल्याही प्रकारची तक्रार नाही असे दिसून येते....

6] The learned counsel for the petitioners contends that his presence in the suit is necessary for complete and effectual adjudication of dispute, though no relief is claimed against him and he relies upon the judgment in the case of **Adam A.Sorathia and another Vs. Municipal Corporation of Greater Bombay and another** reported in **2001 (3) Mh.L.J.** Para nos. 8 and 9 of the said judgment as under :

8. The law relating to the necessary and proper parties to the proceedings is no longer untouched. The law is settled by series of judgments of this Court and of the Apex Court that where the presence of respondent is necessary for complete and effectual adjudication of the dispute, though no relief is claimed, against him, he is a proper party.

9. The necessity to join the applicants as parties to the suit would definitely depend upon the relief that has been claimed. It shall have to be examined whether the reliefs claimed cannot be granted without the intervention and participation of the

*applicants. If it is so, then they would definitely be called as necessary parties. Reference to sub-rule (2) of Rule 10 of Order 1 of Civil Procedure Code at this juncture, would not be out of place. Under this provision a person, whose presence before the Court is necessary in order to enable the Court effectually and completely to adjudicate and settled all the questions involved in the suit, will be necessary party and will have to be added. The Supreme Court in **Udit Narayan Malpaharia vs. Addl. Member, Board of Revenue, Bihar, AIR 1963 SC 786**, observed:-*

"Though these observations came to be made while entertaining the matter under writ jurisdiction and not under the Code of Civil Procedure, 1908 ("C.P.C." for short), the principle set forth is equally salutary. The description as given in sub-rule (2) of Rule 10 of Order 1 of Civil Procedure Code, coupled with observations cited supra would give the sufficient idea regarding the meaning of the term "necessary and proper parties."

It is equally true that the nature of controversy involved would equally decide the status of a party, namely, whether it is necessary or not. Both the questions have to be considered side by side. From that point of view the controversy raised in this revision application would require close scrutiny.

7] However, the aforesaid judgment is not applicable to the facts of the present case as the plaintiff has not prayed any relief against the present petitioners and the findings are recorded by the trial Court that the petitioners

are not even adjacent owner of the suit property. In view of the same, I do not see any error to interfere with the impugned order. The petitioners want to get demarcated the entire property and they may do so by initiating separate proceedings. The present Writ Petition is accordingly dismissed.

[ARUN R. PEDNEKER]
JUDGE

DDC