

Amberkar

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

**WRIT PETITION (ST) NO. 24458 OF 2023**

Vaibhav Dilip Mane

.. Petitioner

**Versus**

Rajan @ Abhiman Mane & Ors.

.. Respondents

- .....
- Mr. Samir Ashok Kumbhakoni for Petitioner

.....

**CORAM : MILIND N. JADHAV, J.**

**DATE : JUNE 11, 2024**

**P. C.:**

1. Not on board. Mentioned. Taken on board.
2. Perused the praecipe dated 11.06.2024.
3. Heard Mr. Kumbhakoni, learned Advocate for Petitioner.
4. Mr. Kumbhakoni would inform the Court that impleadment of Respondent No. 2 as Defendant No. 2 in the suit proceedings by the learned Trial Court is bad in law. The Application was made by Defendant No. 2 to get herself impleaded in the Suit proceedings filed by Plaintiff for injunction against Defendant No. 1. It was Defendant No. 2's case that she has interest in the suit property. However according to Mr. Kumbhakoni, interest of Defendant No. 1 in the suit property had long being extinguished by virtue of partition proceedings having been culminated under Section 85 of the Maharashtra Land Revenue Code, 1966 and the right of her

predecessor-in-title having been completely extinguished thereafter. He would however submit that the predecessor-in-title of Defendant No. 2 had made a gift deed in the year 2015 in favour of Defendant No. 2 which was in respect of a completely different property and not the suit property. However on the basis of the said gift deed, Defendant No. 2 approached the Trial Court stating that she has an interest in the suit property. He would submit that this aspect has been completely neglected by the learned Trial Court while passing the impugned order of impleadment of Defendant No. 2. According to Petitioner, Defendant No. 2 is not a proper and necessary party as Defendant No. 2 has no nexus whatsoever with the suit property.

5. On reading of the pleadings and the impugned order, it appears that an arguable case is made out by Mr. Kumbhakoni for issuance of notice to Respondents.

6. Issue notice to the Respondents made returnable on 01.07.2024. Humdast permitted. In addition to Court's notice, Petitioner is directed to serve copy of the Petition along with copy of this order on the Respondents and inform them about the next date of hearing by any permissible mode of service and file appropriate affidavit of service with tangible proof thereof on or before the next date. After receiving the notice, Respondents to file affidavit-in-reply on or before

the next date, if so desired with an advance copy to the Advocate for Petitioner.

7. Respondents are directed to remain present either themselves or through their Advocate on the next adjourned date. It is made clear that if Respondents remain absent despite service on the next adjourned date, this Writ Petition shall be heard and disposed of at the stage of admission in the absence of the Respondents. If Defendant No. 2 fails to show her nexus with respect to the suit property, then the impugned order will have to be set aside. If the impleadment has not been done by virtue of the impugned order, the implementation of the impugned order stands deferred until the present Writ Petition is heard and decided by this Court.

8. Stand over to **1<sup>st</sup> July, 2024.**

Amberkar

[ MILIND N. JADHAV, J. ]

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