

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

WRIT PETITION NO.13945 OF 2024

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Date: 2024.10.23
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Santosh Narayan Kamble

...Petitioner

vs.

Prashant Krishna Bhalekar and Ors.

...Respondents

Adv. S. D. Butala i/b Adv. Satish Raut:-	Advocate for the Petitioner.

CORAM : S. M. MODAK, J.

DATE : 21st OCTOBER 2024

P. C. :-

1. Heard the learned Counsel Mr. Butala for the Petitioner-Plaintiff.
2. In a suit for partition pending before the Court of Civil Judge Junior Division Devrukh, the Plaintiff and nine Defendants have entered into a consent terms and filed it in the Court. They have agreed for 1/3rd (to plaintiff and Defendant Nos. 3 to 9), 1/3rd share to Respondent No. 1 and remaining 1/3rd share to Defendant No.2-Prakash. The Trial Court has yet not accepted those consent terms.

3. In the mean time, one Prashant Bhalekar/Respondent No.1 (brother of Defendant No.2) filed an application under the provisions of Order 1 Rule 10 of CPC. The Trial Court allowed it as per the order dated 6th May 2024. It is challenged by the Petitioner/Plaintiff.

4. The learned Counsel Mr. Butala challenged the said order on following grounds:

a) No document is filed by the Applicant to show that the suit property which is purchased as per the tenancy Act, the Intervener is having right title interest.

b) In order to buttress his submissions, he relied upon the written statement filed by Prakash (present Defendat No.2) in RCS No. 1 of 2001 filed by one Jagannath Ketkar. In para No.15, he has pleaded that he and one Mr. Chille and Mr. Kamble were held as tenant-purchasers in their individual capacity.

c) The present Applicant was a party Respondent in that suit and by way of praecipe filed in that suit he has adopted the written statement filed by his brother/present Defendant No.2.

d) The Trial Court has referred about the CST No.565 in paragraph No.15, further this is not the suit property.

e) The Respondent No.1 was neither proper nor necessary party

and at the most he can file independent suit against his own brother.

5. I find substance in his arguments. Hence, issue notice to Respondents, No.1, returnable on **2nd December 2024**.

6. Private notice is allowed. Service affidavit be filed before the next date.

7. Mr. Butala shall take instructions for suo moto appearance of Respondent No. 2 to 10.

8. Till the next date, ad-interim relief granted in terms of prayer clause (c).

[S. M. MODAK, J.]