

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

WRIT PETITION NO. 15210 OF 2024

Manubai Tukaram Sase (since deceased)	]	
Through L. Rs. Balram Tukaram Sase	]	
Age – 69 years approx., Occu. - Service,	]	
R/o. House No. 665, Near Hanuman Mandir,	]	
Village Morivali, Tal. Ambernath, Dist. Thane	]	... Petitioner

Versus

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|----|---|---|-----------------|
| 1. | M/s. Dattakrupa Constructions |] | |
| | Through Vijay Ramchandra Panvelkar, |] | |
| | Age – Adult, Occu. - Business, |] | |
| | R/o. Ramsmruti, Plot No. 45, |] | |
| | Suryoday CHS., Station Vibhag, |] | |
| | Ambernath East, Dist. Thane |] | |
| 2. | Dilip Tukaram Sase |] | |
| | Age – 66 years approx., Occu. - Service |] | |
| | R/o. House No. 665, Near Hanuman Mandir, |] | |
| | Village Morivali, Tal. Ambernath, Dist. Thane |] | |
| 3. | Lilabai Gurunath Aagiwale |] | |
| | Age – 53 years approx., Occu. - Housewife |] | |
| | R/o. House No. 421, Eranjad Road, |] | |
| | Village Aambeshiv, Post – Eranjad |] | |
| | Tal. Ambernath, Dist. Thane. |] | ... Respondents |

Mr. Ramakant Paranjpe :-	Advocate for Petitioner.
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CORAM : S. M. MODAK, J.

DATE : 9th DECEMBER 2024

ORAL ORDER. :-

1. Heard learned Advocate Mr. Paranjpe for petitioner/ Plaintiff. The petitioner is challenging the order Dated 20th June 2024 passed by the Court of Civil Judge Senior Division, Kalyan. By the said order the trial Court has allowed the impleadment prayer made by one Lilabai. On her own she has filed an Application for impleadment as Defendant No.4. The Application is on Page No.30. I have perused that Application. On the basis of several orders passed by the Revenue Authorities it seems that she has based her claim and requested for her impleadment.

2. This Application is filed in a Suit filed by one Manubai Sase. Defendants No.3 and 4 are the sons of Defendant No.1 – Tukaram whereas Manubai is wife of Defendant No.1 Tukaram. It is contended that Tukaram has expired and later on certain amendments in the title clause of the Plaint are made. That all the copies are not part of the Writ Petition.

3. The only submission made is the intervener has not clarified in what capacity she has claimed right, title and interest so as to support her plea for impleadment. My attention is also invited to an order dated 20th January 2022 passed in the same Suit. The Application for intervention filed by another Applicant came to be rejected. The copy of that Application is on Page No.19.

4. Submission is made the learned trial Judge earlier has rejected prayer for intervention by one party whereas by the order which is impugned in this Petition prayer for impleadment is allowed. The submission is it is better if the matter came to be remanded back for fresh consideration.

5. This submission appeals to my conscience.

6. It is true at the time of deciding of Application under Order I Rule 10 of the Code of Civil Procedure, 1908 [CPC] detail inquiry is not contemplated. The Court has to verify whether the party is a proper party or necessary party. This can be done after going through pleadings and documents if any. Even though the Applicant Lilabai has referred to various orders passed by the learned authorities, the

impugned order nowhere discloses how on the basis of those orders she connects her claim to the suit property. In fact it was the duty of the learned trial Judge. I am inclined to set aside the order and remand the proceeding for fresh consideration. For that there is no need to issue notice to the Respondents because this Court has not decided rights of the parties and their rights are unaffected.

7. At the same time the prayer is made that the order dated 20th January 2022 passed on the Application made by the another Applicant also be set aside and remanded because both the Applications are to be decided afresh. I have perused one Application on Page No.19 and order on Page No.21 dated 20th January 2022. It is not clear from the title clause or from the order who has made that request. Liberty can be granted to the trial Court if such party approaches the Court again with similar request, the trial Court to decide that Application also. In view of that I pass following order :-

ORDER

- (i) The order dated 20th June 2024 passed by the Court of Civil Judge Senior Division, Kalyan is set aside.

- (ii) The trial Court is directed to hear the parties and decide the Application filed by the Respondent - Lilabai for impleadment again.
- (iii) The parties are at liberty to make submissions and also to satisfy the Court how they are entitled for impleadment and trial Court to give findings on their prayer considering limited inquiry involved after giving reasoning.
- (iv) The trial Court is at liberty to hear the parties again whose request is rejected by the trial Court on 20th January 2022.

8. Writ Petition is disposed of.

[S. M. MODAK, J.]

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