

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.16825 OF 2024

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Shri.Sohansingh Javansingh Chouhan and Ors. ...Petitioners

V/s.

Shri.Shamrao Pandurang Waghmode and Ors. ...Respondents

Mr.Kuldeep U. Nikam:-	Advocate for Petitioners.
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CORAM : S. M. MODAK, J.

DATE : 10th DECEMBER 2024

P. C. :-

1. Heard learned Advocate Shri.Nikam for the Petitioners.
 2. The Petitioners are the Plaintiffs whereas, the present Respondents are the Defendants. The suit is simplicitor for injunction restraining the Defendants from disturbing the possession of the Plaintiffs over certain portion of the property as described in Para No.13(b) of the plaint. (Page No.28).
 3. During pendency of the suit, the Plaintiffs contend that they have sold away the suit property in favour of one Mukesh Mahadev Vaze as per the sale-deed dated 1st May 2023. In view of this
- Satish Sangar

development, the Plaintiffs have moved before the trial Court for joining his name as Plaintiff No.4. The Application is on Page No.105. The title clause refers the provisions of Order I, Rule 10 of the Code of Civil Procedure, 1908 (“CPC”). The prayer is for joining him as Plaintiff No.4. There is no prayer for amendment in the plaint.

4. The trial Court after hearing both the sides has rejected the said Application as per the order dated 21st July 2024. It is by Second Joint Civil Judge, Senior Division – Sangli. (Page No.117). The proposed Plaintiff No.4 was in fact, on the record as a Power of Attorney Holder of original 3 Plaintiffs. The trial Court referred to the provisions of Order I, Rule 10(2) of CPC in Para No.6. The trial Court has also recorded a finding that there is no averment in the plaint that the Plaintiffs have executed an Agreement for Sale in favour of Power of Attorney Holder, meaning thereby, there was no cause of action to the proposed Plaintiff because he was not in possession of the suit property. The trial Court further observed, “*the proposed plaintiff does not get cause of action to prosecute the defendants for perpetual injunction*”. The trial Court further observed, “*if the defendants will obstruct the peaceful possession of the proposed plaintiff, then he will get fresh cause of action to file a suit against the defendants*”. That is why, Court

held, “*the proposed plaintiff is not proper or necessary party*”.

5. It is the submission of Mr.Nikam that the requirement for joining a party are fully satisfied by going through the averments in the Application and necessary documents and the trial Court has unnecessarily made observations which are not warranted.

6. Issue notice to the Respondents before admission returnable on **28th January 2025**. Private notice, in addition, is allowed. Affidavit of service be filed.

7. Mr.Nikam relied upon the observations in case of *Yogesh s/o Balaji Misar V/s. Keshav Vistari Sontakke and Others*¹. The Petitioners are permitted to file an Application for adjournment before the trial Court and the trial Court to consider it positively.

[S. M. MODAK, J.]

¹ 2014(5) Mh.L.J.53