

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

Writ Petition No.17548 of 2024

Shri Narayan Mahadu Mahale and ors. ... Petitioners.

V/s.

Shri Bajirao Barku Mahale and ors. ... Respondents.

Mr. G.R. Agrawal a/w. Naina P. Boraste	Advocate for the Petitioners.
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CORAM : S.M. MODAK, J

DATE : 11 December 2024.

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Heard learned Advocate Agrawal for the petitioners-plaintiffs at great length.

2. After hearing him and going through the documents annexed to the petition, I am inclined to confirm the findings given by the trial Court. That is why I have not issued notice to the respondents. The reason for deeper scrutiny of the papers is, the suit is now fixed for judgment. There is a background to this writ petition.

3. Earlier, the suit filed by these petitioners was dismissed on merits as per the judgment dated 27 August 2013. It is on Page No.28 to 43. When the plaintiffs filed Regular Civil Appeal No.211/2013, learned Principal District Judge as per the judgment dated 23 July 2019 was pleased to set aside the judgment and

remanded the matter for fresh hearing. The copy of this judgment is on Page No.44. Mr. Agrawal has invited my attention to the reasoning in the said judgment. The material reasonings are as follows:

- (i) All the properties were not partitioned (in fact instead of word 'partitioned' it ought to have been 'included') (Para No.9). The appellate Court further observed even the parties have not adduced adequate evidence in order to resolve the issue involved in the suit (Para No.9).
- (ii) In Para No.12 the appellate Court records in the interest of justice and for giving finality to the dispute between the parties, the judgment has to be set aside.
- (iii) Even the appellate Court has granted liberty to the parties to adduce additional evidence if they desire.

4. After remand the plaintiffs have included Gat No.211 as one of the suit property. It was allowed. Parties have adduced evidence and also argued the matter. On this background, the plaintiffs-petitioners have filed an application for joining two more parties. The application is on Page No.51. The averments in the application are as follows:

- (i) To join one Shamrao Balwant Mahale and legal heirs of deceased Annasaheb B.Mahale as defendants in the Suit.
- (ii) This prayer was made because the names of the Annasaheb Mahale and Shamrao Mahale were appearing on 7/12 extract

of Gat No.211.

5. The learned Counsel Mr. Agrawal has shown me copy of 7/12 extract today.

6. The application was not only for impleadment but also for amendment in the plaint. Para No.4 of the application mentions the plea of the present petitioners in respect of names of those proposed defendants on 7/12 extract. The petitioners contend that the suit should not fail on account of non-joinder of necessary party and in fact those two names have appeared wrongly and in fact they have got no right in Gat No. 211.

सदर प्रतिवादींची नावे ही गट नं. २११ यांस पोकळीस्त अशी असून त्यांचा त्या मिळकतीशी कोणताही हक्क हितसंबंध नाही. परंतु वर नमूद केलेप्रमाणे दाव्यास नॉन जॉईंडर ऑफ नेसेसरी पार्टिज या तत्वाची बाधा येवू नये म्हणून त्यांना प्रस्तुत दाव्याचे कामी सामील प्रतिवादी म्हणून समाविष्ट करण्यात आलेले आहे.

According to Mr. Agrawal when his clients have failed once, now they do not want to take any chance again. Their suit for partition should not be dismissed on account of some technical compliance. On this background, I have read the order passed by the trial Court. The following are the reasonings.

- (i) the application for amendment was filed after final arguments were advanced by the plaintiffs and defendant No.1 to 6 (Para No.5).
- (ii) The learned Judge records in Para No.6 about the plea taken by defendant Nos.1 to 6 opposing amendment. The

defendants have objected that plaintiffs have not claimed partition against the legal heirs of brothers of Parvat Mahale. The suit is filed only for legal heirs of deceased Parvat Mahale (the family tree is there on Page No.17, Para No.2C of the plaint). The present petitioners are from the branch of deceased Mahadu whereas the defendants are from the branch of Barku.

It seems that the plaintiffs want partition of the property which had come to the share of Parvat. He has only pleaded about partition of the property which is allotted to the brothers of Parvat in their partition. **In that sense, the trial Court is right.** That is why the trial Court observed the proposed defendants are not the necessary party to the suit. The trial Court further observed, *just because names of proposed defendants are appearing in a 7/12 extract, this will not entitle the plaintiff to include their names.*

7. I agree with the said reasoning. Lastly, the trial Court rejected the prayer on account of long pendency of the suit and the plaintiffs even though aware about all the names of 7/12 extract have not filed present application earlier. There cannot be any dispute about these factual observation. Lastly, the trial Court observed, *plaintiffs are trying to fill lacuna by proposed amendment.*

8. The learned Advocate Shri Agrawal apprehends the said observation will be considered as a hurdle in the final disposal of the

suit and the trial Court not to consider it as one of the factor for non-suiting the petitioners. When the trial Court has only observed that these proposed defendants are not necessary or proper parties, it is expected that the trial Court will be considering those observations while deciding the suit finally also. **(It is expected from the trial Court not to dismiss the suit on that ground).** The trial Court can decide the same independent of these observations on the basis of the merits of the suit. **So I find no reason to interfere in the observations except the observation noted above.**

9. The learned Advocate Shri Agrawal apprehends these two persons may create complications if the decree is put to execution. Shri Agrawal invited my attention to the averments in Para No.5 of the plaint. Even the plaintiffs have pleaded how the names of the defendants are recorded on 7/12 extract of certain land when Gat scheme was introduced. Whether the names are wrongly recorded or not, the trial Court will decide it when the suit is finally decided on the basis of evidence. But if the petitioners also contend that the names of proposed defendants Annasaheb and Shamrao are wrongly recorded on 7/12 extract of Gat No.211, the petitioners may continue with the same stand, whenever any issue arises and even they can take appropriate steps as permissible by law.

10. With these observations, **writ petition is dismissed.**

(S.M. MODAK, J.)