



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition No.1329 of 2021

VINOD S/O VITTHALRAO CHANDPURKAR VS RATIRAM S/O SOMA JARILE AND OTHERS

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri S.D. Ingole, Advocate for the Petitioner/s

Shri S.D. Khati, Advocate for the respondent No.5

CORAM : ANIL S. KILOR, J.

DATED : 11.01.2024

1. Heard.
2. Rule. Rule made returnable forthwith. Heard finally by the consent of both the parties.
3. In this petition, the order below Exh.105 passed by the 9th Civil Judge Senior Division, Nagpur, allowing the application filed by the respondent No.5 for intervention, is under challenge.
4. Admittedly, the suit filed by the petitioner is for specific performance against the respondent Nos.1 to 4, who are the owners of the land in question. As far as the respondent No.5 is concerned, the application for intervention is based on an agreement alleged to have executed by the petitioner in favour of the respondent No.5. Opening paragraph of the said agreement itself shows that the said agreement was not entered into by the plaintiff/petitioner as an owner of the suit property, but in view of the agreement between the plaintiff and the defendant Nos.1 to 4.

5. Thus, it is apparent that on the date of the agreement or even till date, there is no title in the petitioner and in absence of any such title, the respondent No.5 does not get any right to claim any relief as regards the suit property.

6. Thus, considering the above referred fact, as the respondent no.5 is neither the necessary party nor the proper party for the reason that any judgment or order in the suit filed by the petitioner would not adversely affect the right of the respondent No.5, as there is no prayer clause against the respondent Nos.1 to 4. Furthermore, the presence of the respondent No.5 is not necessary to decide the suit or the issue involved in the said suit.

7. In the circumstances, I am of the opinion that the learned trial Court has committed a grave error in allowing the application without considering the above referred facts. Accordingly, I pass the following order:

- (i) The writ petition is **allowed**.
- (ii) The order below Exh.105 dated 15.02.2020 passed by 9th Jt. Civil Judge Senior Division, Nagpur in Special Civil Suit No.976 of 2014, is hereby quashed and set aside and consequently, the application Exh. 103 is hereby rejected.

Rule accordingly. No costs.

[ANIL S. KILOR, J.]