



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

WRIT PETITION NO.4342/2023

Dr. Sanjay Padmsi Khona alise
Abhednath Guru Sevanath,
aged about 58 years, Occ. Doctor,
r/o Shri Rampur Yogi Math, Ramgaon
(Rameshwar), Tq.Darwaha, Dist.Yeotmal.**PETITIONER**

...V E R S U S...

1. Namdeo Ramkrushna Katkar,
aged 57 Years, Occ. Agriculturist,
r/o Plot No. 85, New Gilani Nagar,
Umarsara, Tq.Dist. Yeotmal.
2. Dinkar Krushnarao Dhakulkar,
aged 58 years, Occ. Agriculturist,
r/o Ramgaon (Rameshwar),
Tq. Darwaha, Dist. Yeotmal.
3. Balkrushna Gulabrao Dhone,
aged 60 years, Occ. Private,
r/o c/o Shri Sant Namdev Maharaj
Mandir, Jamb Road, Tq. Dist. Yeotmal.
4. Keshav Suryabhanji Thakare,
aged 68 years, Occ. Agriculturist,
r/o Mundhal, Post Shelodi,
Tah. Darwaha, Dist. Yeotmal.
5. Jagannath Akaram Balode,
aged 68 years, Occ. Agriculturist,
r/o Near Sidha Birbalnath Temple,
Manora, Tq. Manora, Dist.Washim.
6. Shirish Vishnupant Sartabe,
aged 64 years, Occ. Private,
r/o Vaidya Nagar, Sindhi Camp,
Tq. Dist. Yeotmal.

7. Vishwanath Guruyogi Sevanath
Alise Vishnu s/o Wasudeo Kalambe,
aged about 66 years, Occ. Nil, r/o Bori
(Arab), Tq. Darwha, Distt. Yeotmal. **...RESPONDENTS**

Mr. N. Borkar, Advocate for petitioner.
Mr.V.G.Bhamburkar, Advocate for respondent Nos. 1 to 6.
Mr. P. V. Thakare, Advocate for respondent No.7.

CORAM:- ANIL L. PANSARE, J.
DATED :- 08.07.2024

ORAL JUDGMENT

Rule. Rule is made returnable forthwith. Heard finally
by consent of learned counsel for the parties.

Heard Mr. N. Borkar, learned counsel for the petitioner,
Mr. V. G. Bhamburkar, learned counsel for the respondent Nos. 1
to 6 and Mr. P. V. Thakare, learned counsel for respondent No.7.

2. The challenge is to the order dated 30.06.2023, passed
below Exh.-34 in Regular Civil Suit No.83/2018.

Respondent No.7 had filed an application under Order I
Rule 10 of the Civil Procedure Code, 1908, seeking to join him as
party-defendant on the ground that he is a necessary party. The
petitioner-defendant objected to application on the ground that if
at all he is to be joined as party to the suit, his interest and that of
the respondent Nos. 1 to 6 is common and, therefore, he could not
join as party defendant.

3. Learned counsel for the petitioner has invited my attention to the prayer made in the suit, which reads thus:

“It is therefore prayed that this Hon’ble Court to be pleased, grant decree of declaration permanent injunction against the defendant and declare the defendant not a Mahant or Mathadhipati of Ramapur Yogi Math and declare the Vishwanath Maharaj Guru Sevanath Maharaj as Mathadhipati of that Math.

Appoint the receiver for the proper administration of the said Math till the decision of the suit. Cost of suit be saddled on defendant..”

4. Thus, the plaintiffs intend to seek declaration that Vishwanath – respondent No.7, ought to be declared as Mahant of the mutt. If that be so, counsel for the petitioner is right in contending that the interest of plaintiffs and respondent No.7 is common and, therefore, the respondent No.7 ought to have been added as plaintiff and not the defendant.

5. As such, the counsel for the petitioner contends that the suit having been filed in representative capacity, the presence of respondent No.7 is not necessary. To my mind, the scope of filing suit under the representative capacity is altogether different. The suit in representative capacity could be filed where numerous persons have the same interest in a suit and, therefore, one or more out of them, by taking permission of the Court, may file a suit or defend the suit, as the case may be.

6. In the present case, I could not find that there are numerous persons who have such interest except for the plaintiffs who intend to seek declaration that the respondent No.7 should be declared as Mahant. In the circumstances, if at all the respondent No.7 intends to join the suit, he ought to have been added as plaintiff and not as defendant. The Trial Court failed to recognize the objection taken by the petitioners and further failed to consider that the plaintiffs and respondent No.7 have common interest in the suit.

7. In view thereof, the order impugned is not sustainable. The same is quashed and set aside to the extent of adding respondent No.7 as party-defendant No.2. The order stands modified by directing the plaintiffs to add respondent No.7 as plaintiff No.7. The amendment be carried out within 14 working days and the amended copy be served on the other side.

Rule is made absolute in the above terms. No order as to costs.

(Anil L. Pansare, J.)

kahale