



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

WRIT PETITION No.1145 OF 2024

(Smt. Tekeshwari wd/o. Pritamsingh Upwanshi Vs. Shyamrao s/o. Kawaduji Zararia)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. Prashant Gode, Advocate for petitioner.

CORAM : ANIL S. KILOR, J.

DATE : 20th FEBRUARY, 2024.

1. The Petitioner, who is the defendant in a suit for injunction, declaration and possession, in which the plaintiff moved an application under Order 1 Rule 10 of the Code of Civil Procedure for joining of one Rahul Upawanshi and Sunny Upwanshi as defendant Nos.2 and 3, came to be allowed vide impugned order dated 22.12.2023, which is the subject matter of challenge in this writ petition.

2. Mr. Prashant Gode, learned counsel for the petitioner argued that though the plaintiff was party to the sale-deed which was executed in 2004 in favour of Rahul and Sunny, who are allowed to be joined as defendant Nos.2 and 3, despite the same no steps were taken by the plaintiff to join them and when the matter was posted for final argument the application was moved stating that, since the issue was framed by the trial Court whether the suit is bad for non-joinder of party, the plaintiff realized that Rahul and Sunny are the necessary parties.

3. It is, therefore, submitted that at a belated stage learned trial Court ought not to have exercised the discretion and rejected the application. It is submitted that allowing such application would amount to re-opening of the trial which would adversely affect the interest of the defendant.

4. Learned trial Court while allowing the application under Order 1 Rule 10 of C.P.C. has considered the argument made by the learned counsel for the petitioner as regards the delay. The learned trial Court observed that Order 1 Rule 10 of C.P.C. provides that such an application can be moved at any stage or if necessary the Court can suo-motu direct to add party to the suit, which finding is just and proper and needs no interference.

5. As far as second contention is concerned, even if the suit is re-opened after addition of defendant Nos.2 and 3, as the petitioner is defendant, the sufferer would be the plaintiff for a delay in deciding the suit.

6. In the circumstances, considering the reasons recorded by the learned trial Court, I do not find any error committed by the learned trial Court, accordingly the writ petition is **dismissed**. No order as to costs.

(ANIL S. KILOR, J.)