



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5557 OF 2024

Virat s/o Prakash landage
Age: 35 years Occu. Agri.,
R/o. Sengaon, Tq. Sengaon,
Dist. Hingoli.

.....PETITIONER
(Ori. Plaintiff)

VERSUS

1. Anil S/o Manikrao Deshmukh
Age: 46 years, Occu. Agri
R/o. Sengaon, Tq. Sengaon,
Dist. Hingoli.
2. Vitthal S/o Dinkarrao Deshmukh
Age: 51 years, Occu. Agri.
R/o, Pankanergaon, Tq. Sengaon,
Dist. Hingoli.
3. Surajkumar s/o Gulabrao Dhurgade
Ae: 52 years, Occu. Agri.
R/o Baramati Tq. Baramati,
Dist. Pune
Through G.P.A. Balasaheb s/o Madhavrao Naik
Age:49 years, Occu. Agri,
R/o. Devgalli Hingoli,
Tq. And Dist. Hingoli
(Respondents 1 to 3-Ori. Defendants 1 to 3)
4. Ambadas S/o Manikrao Deshmukh
Age: 56 years, Occu. Agri and Job
5. Sunil S/o manikrao Deshmukh
Age: 50 years, Occu. Agri
6. Manohar s/o manikrao Deshmukh
Age 43 years, Occu. Agri

7. Ashok s/o Manikrao Deshmukh
Died through his lrs.
- 7-1 Avinash s/o Ashok Deshmukh
Age 36 years, Occu. Agri
- 7-2 Satish s/o Ashok Deshmukh
Age: 33 years, Occu. Agri
- 7-3 Shobha w/o Ashok Deshmukh
Age: 58 years, Occu. Household
R. Nos. 4 to 7/3 are R/o. Sengaon,
Tq. Sengaon, Dist Hingoli.

.....RESPONDENTS
(R.Nos.4 to 7/3 are added in suit.)

Ms. S. G. Chincholkar, Advocate for the Petitioner
Mr. D. B. Rasve, Advocate for Respondent nos.1 and 2
Mr. B. S. Chondhekar, Advocate for Respondent nos.4 to 6 and 7

CORAM : ROHIT W. JOSHI, J.

DATED : 10TH JULY, 2025

ORAL JUDGMENT :-

. The petitioner has filed a suit for declaration of ownership and perpetual injunction being Regular Civil Suit no.165 of 2022 against the respondent nos.1 to 3. The respondent nos.4 to 7 have filed an application under Order I, Rule 10 in the said suit for adding their names as party defendants. The said application dated 15.09.2023 filed vide Exhibit 36 came to be allowed by the learned Trial Court vide

order dated 14.02.2024. This order dated 14.02.2024 is challenged by the petitioners/original plaintiffs in the present petition.

2. The contention of the learned Counsel for the petitioner is that the petitioner/plaintiff is a *dominus litis* and therefore no person can be ordered to be impleaded as a party in the suit against his will. It is contended that the suit is a suit for declaration of ownership and the respondent nos.4 to 7 do not claim to be owners of the suit property. The learned Advocate further contends that the other relief sought in the suit is for perpetual injunction against the defendants that they should not cause obstruction to possession of plaintiff over the suit property. Learned Advocate contends that the injunction is sought only against the respondent nos.1 to 3, who are the defendants in suit. Learned Advocate further contends that since prayer for injunction is not made against respondent nos.4 to 7, the respondent nos.4 to 7 will not be necessary or proper parties to the suit.

3. Per contra, the learned Advocate for the respondent nos.4 to 7 by referring to the application at Exhibit 36

contends that the respondent nos.4 to 7 are in possession of the suit property for around 40 years. He contends that although, Regular Civil Suit No.100 of 2012 for perpetual injunction filed by father of respondent nos.3 to 7 against the petitioner, his father and paternal uncle being Regular Civil Suit No.100 of 2012 came to be dismissed on 20.10.2018. A substantive appeal against the said decree is pending before the learned District Court. The said appeal is registered as Regular Civil Appeal No.41 Of 2018. The learned Advocate further contends that presence of respondent nos.4 to 7 is necessary for just, proper and complete adjudication of the suit.

4. It is well settled that a plaintiff is a master of his suit and enjoys the freedom to implead such persons as he deems fit as parties to the suit. Normally, no person can be ordered to be added as party to the suit against the will of the plaintiff. However, this rule is not absolute. It is subject to an exception that in case where a meaningful and effective decree cannot be passed in the absence of a person, such person is required to be added as party to the suit despite

opposition of the plaintiff. Apart from this, if rights of any person are directly and substantially affect by the substantive suit, then also such person can seek impleadment in the suit against desire of the plaintiff.

5. In the case at hand, what transpires is that the plaintiff has sought a declaration of ownership over the suit property. The respondent nos.3 to 7 admittedly do not claim ownership but only possession over the suit property. The second prayer in the suit is for perpetual injunction for protection of possession. The plaintiff is not seeking any injunction against the respondent nos.4 to 7.

6. In that view of the matter, it is clear that the presence of respondent nos.4 to 7 is not required for just, proper and complete adjudication of the suit and moreover, rights of respondent nos.4 to 7 will also not be affected by the final outcome of the suit.

7. The learned Trial Court has clearly erred in passing the impugned order disregarding the aforesaid settled legal principle. The impugned order is thus unsustainable and is liable to be quashed and set aside.

8. The Writ Petition is therefore **allowed** by quashing and setting aside order dated 14.02.2024 passed by the learned Civil Judge, Junior Division, Sengaon on application at Exhibit 36 in Regular Civil Suit No.165 of 2022 and rejecting the application at Exhibit 36 filed in the said suit.

9. Parties to bear their own cost.

10. Civil Application, if any, stands disposed of.

(ROHIT W. JOSHI, J.)