



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5289 OF 2014

Keranbai Janardhan Shinde,
Age : 45 years, Occu : Household & Agri.,
R/o. Kilaj, Tq. Tuljapur, Dist. Osmanabad.

...PETITIONER

Versus

1. Gahininath Mahada Garad,
Age : 75 years, Occu : Agri.,
2. Saudagar Gahininath Garad,
Age : 35 years, Occu : Agri.,
3. Sudhakar Gahininath Garad,
Age : 25 years, Occu : Agri.,
All above R/o. Chikundra,
Tq. Tuljapur, Dist. Osmanabad.
4. Nimabai Tanaji Bendkale,
Age : 32 years, Occu : Household and Agri.,
R/o. Maddi Salgara, Tq. Tuljapur,
Dist. Osmanabad.

...RESPONDENTS

Mr. Shirsath P. B., Advocate for the Petitioner.
Nr, Patne Santosh N., Advocate for Respondent Nos. 1 to 4.

CORAM : ABHAY J. MANTRI, J.

DATE : NOVEMBER 06, 2025

JUDGMENT :

1. Heard. **Rule.** Rule is made returnable forthwith and heard finally by consent of the learned counsel for the respective parties. Perused the impugned order and record.

2. The original plaintiff, being aggrieved by the order dated 14th February 2014 passed by the learned Joint Civil Judge Junior Division, Tuljapur, below Exhibit 54 in Regular Civil Suit No.165 of 2009, whereby the application filed by the original defendant Nos. 2 to 4 was allowed and they were added to the suit as necessary parties.

3. Mr. Shirsath, learned counsel, during the course of arguments submitted that the petitioner has filed the suit for partition and possession, against defendant Nos. 1 to 4; however, defendant Nos. 2 to 4, who are his step-brothers and step-sister, as such they are not necessary parties. Accordingly, the petitioner had filed an application for deletion of their names, which was allowed on 25th March 2011, and the corresponding amendment to the plaint was carried out. However, subsequently, the original defendant Nos. 2 to 4 filed an application (Exh. 54) to be added as parties to the suit on the ground that they are necessary parties, and the said application was allowed. He has taken me through the orders on record.

4. He further argued that the application filed by the respondents was time-barred and beyond the period of limitation, and therefore, on that ground alone, it was liable to be rejected. Alternatively, he submitted that the Trial Court has no power to review its own order and, therefore, the impugned order is illegal. He relied upon Order XXIII Rule 1, Order I Rule 10, and Section 151 of the Code of Civil Procedure, 1908 (for short "*CPC*"),

and contended that the learned Judge has exceeded his jurisdiction in passing the impugned order, as he has no power to review its own earlier order, apart from the fact that the application itself was time-barred. Hence, he urged that the petition be allowed by setting aside the impugned order.

5. On the other hand, Mr. Patne, learned counsel for the respondents, vehemently contended that respondent Nos. 2 to 4, being the step-brothers and step-sister of the petitioner, are necessary parties, and the Trial Court has rightly considered this aspect and allowed the application. Therefore, no interference is warranted in writ jurisdiction. Hence, he urged for the dismissal of the writ petition.

6. At the outset, it appears that the petitioner does not dispute that respondent Nos. 2 to 4 are his step-brothers and step-sister. His only contention is that they have no right or interest in the ancestral property and, therefore, are not necessary parties. I have also perused the order passed below Exhibit 24. It appears that the said order was passed under Order XXIII Rule 1 of the CPC, which permits the plaintiff to abandon his claim against any of the defendants at any time; accordingly, the application was allowed. While passing that order, the Trial Court did not consider whether respondent Nos. 2 to 4 were necessary parties to the proceedings; rather, it allowed the application solely on the plaintiff's request and without hearing defendant Nos. 2 to 4.

7. On perusal of the record, it prima facie appears that the petitioner does not dispute his relationship with respondent Nos. 2 to 4 as his step-brothers and step-sister. Likewise, on examining the plaint, it is evident that the suit has been filed for partition and separate possession of the suit property. In such circumstances, respondent Nos. 2 to 4, being the step-brothers and step-sister of the plaintiff, are necessary parties to the Suit. Whatever share they may be entitled to will be determined at the time of the final hearing and not at this preliminary stage. Therefore, I do not find any substance in the petitioner's contention that they are not necessary parties to the proceedings.

8. Likewise, the question of limitation does not arise in this matter, as the defendants are not challenging the order dated 25th March 2011 by filing an application for review. The said order was passed after considering Order XXIII, Rule 1, of the CPC, and not under Order I, Rule 10, of the CPC. Moreover, under Order I Rule 10(2) of the CPC, the Court may, at any stage of the proceedings, add parties whose presence is necessary to enable the Court to effectually and completely adjudicate upon and settle all the questions involved in the suit. In the present case, defendant Nos. 2 to 4 are the step-brothers and step-sister of the plaintiff and, in my view, they are the necessary parties to the proceedings. Therefore, I do not find merit in the contention that the application was barred by limitation or that the Court lacks the power to review its own order, as the question of review

does not arise here.

9. On perusal of the impugned order, it appears that the learned Judge has considered the submissions of both learned counsel, and after going through the record, has rightly observed that defendant Nos. 2 to 4 are necessary parties to the suit and to avoid multiplicity of the proceedings, the application was allowed. I do not find any illegality or perversity in the impugned order warranting interference in the Writ Jurisdiction.

10. Consequently, the petition, being bereft of merits, stands dismissed. The Rule is discharged.

(ABHAY J. MANTRI, J.)