



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

14 WRIT PETITION NO. 7440 OF 2025

REKHABAI SANJAY SALVE AND OTHERS

VERSUS

RAHUL YADAVRAO GANGAWANE

...

Mr. Jade Rahul M., Advocate for the Petitioner

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CORAM : S. G. CHAPALGAONKAR, J.

DATE : 26.06.2025

PER COURT :-

1. Petitioners impugn order dated 19.03.2025 passed below Exhibit-58 by Civil Judge, Junior Division, Phulambri in Regular Civil Suit No.44 of 2019.

2. Respondent No.1 had instituted suit for partition and separate possession of suit properties. During pendency of suit, sisters of plaintiff filed applications seeking directions to add them as parties to the suit. Those applications were allowed and plaintiff was directed to take necessary steps for adding them as parties vide orders passed below Exhibits 18 and 19. In spite of such directions, respondent / plaintiff failed to take steps for addition of parties.

3. In this background, defendant No.1 filed application with following prayers:

- A. *This contempt application / petition may kindly be allowed.*
- B. *To punish plaintiff under the provisions of Contempt of Courts Act in connection with the disobedience and disregard of*

the order below Exh.18 dated 22.01.2021, order below Exh. 1 & 33 dated 28.07.2022 passed by this Hon'ble Court in above said suit.

C. The defendant No.1 may kindly be directed or granted permission to add the necessary parties according to the para no.6 of the plaint in the interest of justice & oblige.

The trial court, after considering rival contentions, passed impugned order which reads as under;

ORDER

- i. Application is partly allowed.*
- ii. Defendant no.1 is transposed as plaintiff in this matter and permitted to add necessary parties to present suit as per order dated 22/02/2021.*
- iii. Application to the extent of punishing plaintiff under provisions of the Contempt of Court Act is rejected.*
- iv. Defendant no.1 to take proper steps to add necessary parties to present suit*
- v. Cost in cause.*

4. Learned Advocate appearing for petitioners submits that respondent / plaintiff had flouted orders of trial Court passed below Exh. 18 and 33 directing him to add necessary parties. As such, he has committed contempt of Court and liable to be punished for such violation. Similarly, since sisters are necessary parties they ought to have been added. Defendant no.1 never prayed for his transposition as plaintiff, therefore, such orders could not have been passed by trial court.

5. Having considered submissions advanced, it can be observed that trial court issued directions to plaintiff vide orders passed below Exh. 18 and 33 in suit to add sisters as necessary parties. However, if plaintiff failed to do so, it has civil consequences on proceeding of suit but it cannot be construed as cause for initiating action under provisions of Contempt of Court. So far as order of transposition is concerned, looking to the prayers in application below Exh. 58, defendant no.1 sought permission to add sisters as necessary parties as per previous orders passed by trial Court. However, since plaintiff defaulted in taking necessary steps, considering nature of suit that is for partition and separate possession, trial court directed transposition of defendant no.1 as plaintiff. In partition suit every defendant virtually stands in the position of plaintiff as all the parties based their claims on similar set of facts. Therefore, trial court by exercising powers under order 1 Rule 10(2) issued directions to transpose defendant No.1 as plaintiff. There is no fetter in law to exercise such powers even without application by any party and Court can suo motu exercise the same considering interest of justice.

6. In that view of the matter, I do not find any merit in writ petition. Hence, writ petition stands rejected.

[S. G. CHAPALGAONKAR, J.]