

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8198 OF 2023

Uttam Harsing Rathod And Others

VERSUS

Subhash Narsing Rathod And Others

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Advocate for the Petitioners : Mr. Paranjape Prakash S

Advocate for Respondent No.29 : Mr. D.A. Suryawanshi h/f Mr. D.B.
Thoke

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CORAM : S. G. CHAPALGAONKAR, J.

DATED : JULY 03, 2025

PER COURT :-

1. Heard learned advocates appearing for respective parties.
2. The present petition takes exception to order dated 23.11.2022 passed by Civil Judge, Senior Division, Chalisgaon in Special Civil Suit No.87 of 2018 below Exhibit-154.
3. The petitioners instituted suit seeking relief of declaration, partition and perpetual injunction against the defendants. During pendency of suit, petitioners filed an application Exhibit-154 under Order VI Rule 17 r/w Order I Rule 10 of Civil Procedure Code seeking amendment of plaint and impleading the mortgagee as defendant no.30. The said application was opposed by defendants saying that such mortgage is created during pendency of suit and proposed respondents would not be necessary party for adjudication of dispute. Learned Trial Judge after considering rival submissions observed that defendant no.29 has availed the loan by mortgaging the

suit property. Such mortgage is created during pendency of suit. Learned Trial Judge also observed that the interest of parties would be protected by *lis pendens* as laid down in Section 52 of Transfer of Property Act and in case suit is decreed, the issue should be decided by Executing Court.

4. It is apparent that suit is instituted for relief of partition and separate possession. The proposed respondent is the mortgagee and entry of such mortgage is taken in record of right. However, his presence in the suit for partition would not be necessary when persons having right in suit property are parties before Court.

5. It is trite that the Court can exercise power under Order I rule 10 of Civil Procedure Code to implead the party only when such party is necessary for adjudication of dispute and passing final decree. From the contents of application, it is not discernible that proposed respondent no.3 would be necessary for passing a final decree in suit for partition on the basis of mortgage created during pendency of suit for partition of joint family property. As rightly observed by the Trial Court, the *pendente lite* mortgagee would not affect the rights of parties to the suit. In that view of matter, this Court did not find any reason to interfere in impugned order in exercise of jurisdiction under Article 227 of Constitution of India. In result, writ petition stands rejected.

(S.G. CHAPALGAONKAR, J.)