



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8475 OF 2023

Pallavi d/o. Vaijinath Galande

Age:36 years, Occ: Service,
R/o. Shivajinagar, Dharmabad,
Tq. Dharmabad, Dist. Nanded.

... PETITIONER

VERSUS

1. Vaishal d/o. Vaijinath Meghmale

@ Vaishal w/o. Nitin Jod
Age: 45 years, Occu: Service,
R/o. Shivsainagar, Beside Pawak,
Hanuman Mandir, Tarolda Bk.
Tq. & Dist. Nanded.

2. Vaijinath s/o. Laxman Galande

Age:65 years, Occu: Retired,
R/o. Shivsainagar, Plot No.13,
Gat No. 243, Tarolda Bk.
Tq. & Dist. Nanded.

3. Ranjana w/o. Vaijinath Galande

Age: 62 years, Occu: Household,
R/o. Shivsainagar, Plot No.13,
Gat No. 243, Tarolda Bk.
Tq. & Dist. Nanded.

4. Sainath s/o. Vaijinath Galande

Age:26 years, Occu: Nil,
R/o. Shivsainagar, Plot No.13,
Gat No. 243, Tarolda Bk.
Tq. & Dist. Nanded.

5. Gajanan s/o. Vaijinath Galande

Age: 42 years, Occu: Household,
R/o. Shivsainagar, Plot No.13,
Gat No. 243, Tarolda Bk.
Tq. & Dist. Nanded.

6. Priyanka d/o. Vaijinath Galande

Age:32 years, Occu: Nil,
R/o. Shivsainagar, Plot No.13,
Gat No. 243, Tarolda Bk.
Tq. & Dist. Nanded.

...RESPONDENTS

Mr. Amol Ram Joshi, Advocate for the Petitioner.

Mr. A. A. Yadkikar, Advocate for the Respondent No.1.

CORAM : KISHORE C. SANT, J.
RESERVED ON : 28th FEBRUARY 2025
PRONOUNCED ON : 7th APRIL 2025

ORDER :-

1. Heard the learned Advocates for the respective parties.
2. The petitioner has approached this Court challenging an order dated 12th June 2023 passed by the learned Joint Civil Judge, Senior Division, Nanded on an application Exh.212 in Special Civil Suit No.108 of 2011. The application for intervention in the suit filed by the present petitioner came to be rejected by the impugned order.

3. The facts, in short, are that, the Respondent No.3 to 6 filed a suit against present respondent No.1 and 2 for declaration that the sale-deed executed by respondent No.2 in favour of respondent No.1 is not binding on them. The plaintiff's case is that the Defendant No.2 - Vaijinath Galande, husband of Respondent No.3 and father of plaintiff Nos.2 to 4 had executed sale-deed in favour of respondent No.1 without any legal necessity. The property belongs to family of plaintiffs and respondent No.2. The respondent No.2 was not looking after the family members. He is also not paying maintenance to them and stays away from the family. He executed sale-deed in respect of landed property i.e. residential house to respondent No.1. The property which is sold is the only house property of the family. It is also alleged that the sale-deed is bogus etc.

4. The suit proceeded further. The present petitioner, who happens to be the daughter of respondent No.2 - Vaijinath Galande and sister of Respondent Nos.4 to 6, was staying at different place and was unaware of filing of the suit. When she came to know about filing of the suit, she

filed an application for intervention. It is specific case of the petitioner that she happens to be a member of the family and, therefore, she is a necessary party to the suit. The plaintiff, though, were having knowledge that the petitioner is also a member of family still deliberately did not join her as a party. She happens to be a daughter of respondent No.2 from his first wife. She is real sister of respondent No.5 and 6 and step sister of respondent No.4 and, thus, she filed an application seeking intervention.

5. The Respondent No.2 filed say and opposed the application stating that the application is not tenable. She is already given some amount at the time of her marriage and prayed for rejection. The plaintiffs i.e. Respondent No.3 to 6 also submitted say that the suit is kept for argument/judgment and, at this stage, the application is filed only to prolong the suit and they also prayed for rejection.

6. The learned trial Court heard the parties. framed the points. The trial Court held that the present petitioner is not a necessary party. Her presence is not required for adjudication of the suit and rejected the

application.

7. Mr. Joshi, the learned Advocate for the petitioner vehemently argued that the relationship between the parties is not disputed. The petitioner has equal interest in the suit like the plaintiffs. He, thus, submits that when she has interest in the property, she ought to have been filed an application for intervention.

8. Mr. Yadkikar, the learned Advocate for the respondent vehemently opposed the petition. It is submitted that the application for intervention was filed at the stage where the suit was kept for judgment. Filing of the application, at this stage, clearly shows that the petitioner is interested in prolonging the proceeding of the suit. Care of her interest is already taken by the plaintiffs. The suit is only for declaration that the sale-deed is not binding, nothing to show that the petitioner's assistance is absolutely necessary. He relied upon the following judgments:

(i) *Anokhe Lal Vs. Radhamohan Bansal and Ors.*¹;

(ii) *Naba Kumar Hazra and Ors. Vs. Radhashyam Mahish*

1 AIR 1997 SC 257

and Ors.²;

(iii) ***Sudhamayee Pattnaik and Ors. Vs. Bibhu Prasad Sahoo and Ors.*** decided by the Hon'ble Apex Court in Civil Appeal No.6370 of 2022 on 16th September 2022.

(iv) ***Moreshar s/o. Yadaorao Mahajan Vs. Vyankatesh Sitaram Bhedi (D) Thr. LRS. And Ors.*** passed by the Hon'ble Supreme Court in Civil Appeal No.5755-5756 of 2011 on 27th September 2022.

9. After hearing the parties, this Court has to consider as to whether the presence of the petitioner is necessary for deciding the suit. The relationship between the parties is not disputed by any of the parties. The petitioner happens to be a daughter of defendant No.2 and sister of plaintiff No.2 to 4. This relationship is not denied.

10. From the discussion in the trial Court's order and from the prayers in the suit it is clear that there are also prayers for partition and separate possession in the suit. If the suit is decreed, the plaintiffs would get even separate possession and decree of partition. The trial Court has, however, observed that the prayers of partition and separate possession are ancillary prayers and the main prayer is only to declare the sale-deed

as not binding. Application is rejected on one more ground that on the date fixed, the petitioner and her Advocate were absent. The conclusion is, therefore, drawn that the application is filed only for protracting the suit.

11. In the case of *Anokhe Lal Vs. Radhamohan Bansal and Ors.* (supra) the Hon'ble Apex Court held that a person, merely a proper party, need not be a necessary party while deciding the application. The Court has to see the presence of such party is absolutely necessary to decide the *lis*. In the case of *Naba Kumar Hazra* (supra), it was observed that allowing intervenor to join the suit would require to commence the proceeding *de-novo*. In the case of *Moreswar Yadaorao Mahajan* (supra), the Hon'ble Apex Court held that, a 'necessary party' is a person who ought to have been joined as a party and in whose absence no effective decree could be passed by the Court. In the case of *Sudhamayee Pattnaik and Ors.* (supra), the Apex Court was dealing with the case wherein the subsequent purchasers had approached for impleading them as a party defendant.

12. This Court finds that the said judgments are not applicable in the facts of the present case. While dealing with such application, it is true that the plaintiffs are *dominus litis* and it is for plaintiffs to decide as to whom to join as a party. The plaintiffs cannot deliberately keep some person having right in the property, away from the proceeding. In the present case, the relationship is not disputed. When all the parties are aware of the relationship, still the petitioner was not joined as a party. This clearly shows that it is deliberate act of the plaintiffs to keep the petitioner away. The learned trial Court though has observed that, there is a prayer for partition and separate possession, still considered it to be an ancillary relief. This Court finds that the said observation is not correct. When the decree of partition is to be passed, certainly the petitioner would be entitled to receive share in the property. Atleast she has interest in the family property. In this case, therefore, it is necessary that she should be added as a party. Merely because the suit is likely to be protracted that the application is filed at the fag-end of the trial is no reason to deny a person an opportunity to participate in the suit when it is shown that such person has interest in the *lis*.

13. For all these reason, this Court is inclined to allow the writ petition. Writ petition is, therefore, allowed. Hence, the following order:

ORDER

- (i) Writ petition stands allowed.
- (ii) The impugned order dated 12th June 2023 passed by the learned Jt. Civil Judge Senior Division, Nanded below application Exh.212 in Special Civil Suit No.108 of 2011 is quashed and set aside.
- (iii) Application below Exh.212 in Special Civil Suit No.108 of 2011 pending before the learned Jt. Civil Judge Senior Division, Nanded stands allowed.
- (iv) The trial Court to dispose off the suit as early as possible and preferably within one year from today.
- (v) With this, Writ Petition stands disposed off.

[KISHORE C. SANT, J.]

- 1. At this stage, learned Advocate for the Respondent prays that the effect of the order be stayed for three weeks.
- 2. The said requested is objected by the petitioner stating that in fact,

stay was granted in favour of the petitioner.

3. At the request of the learned Advocate for the respondent, operation of the order stayed for three weeks from today.

[KISHORE C. SANT, J.]