



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

916 WRIT PETITION NO. 12926 OF 2023

RUSHIKESH BALAJIRAO ALIAS GANESHRAO BORLEPAWAR
VERSUS
GODAWARI MANIKA HADOLE AND OTHERS

...
Advocate for the Petitioner : Mr. Kulkarni Ashutosh S.
Advocate for Respondent No.1 : Mr. S.V. Deshmukh h/f Mr. Deshmukh
Umakant B.
...

CORAM : SIDDHESHWAR S. THOMBRE, J.
DATE : 17.12.2025

PER COURT :

1. Heard the learned Counsel for the respective parties.
2. By way of this petition, the petitioner assails the order dated 24.08.2023 passed below Exhibit 17 by the Civil Judge, Junior Division, Umri in RCS No. 72 of 2023, whereby, the learned trial Court allowed the application filed by respondent No. 1 under Order I Rule 10 of the Code of Civil Procedure (for short "CPC") for impleading her as party defendant came to be allowed.
3. Learned Counsel for the petitioner submits that the suit filed by the Original Plaintiffs was for simplicitor injunction. He invited my attention to the prayer as well as to the averments made in the plaint. He further submits that the west side of the suit property bearing Gut No. 300 belonged to respondent No.1. He further submits that no relief is claimed against respondent No. 1 and therefore, impleading her as

defendant in the suit is not necessary. In support of his contention he relied on order passed by this Court in the case of **Sudhir s/o Sudhakar Rao Deshpande Vs. Arun s/o Narayan Rao Chidrawar and Others**, Writ Petition No. 10237 of 2023 decided on 28.08.2023, particularly on paragraph No. 7, which is reproduced as below :

*“7. Learned advocate for the petitioner/plaintiff has rightly relied on **Sudhamayee Pattnaik and Ors. Vs. Bibhu Prasad Sahoo and Ors.**, AIR Online 2022 SC 120, wherein it is held;*

5..... As per the settled position of law, the plaintiffs are the domus litis. Unless the court suo motu directs to join any other person not party to the suit for effective decree and/or for proper adjudication as per Order 1 Rule 10 CPC, nobody can be permitted to be impleaded as defendants against the wish of the plaintiffs. Not impleading any other person as defendants against the wish of the plaintiffs shall be at the risk of the plaintiffs. Therefore, subsequent purchasers could not have been impleaded as party defendants in the application submitted by the original defendants, that too against the wish of the plaintiffs.

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7. However, at the same time, considering the fact that defendants have also filed counter-claim for declaration of their right, title and interest over the suit property and permanent injunction and in case the counter-claim is allowed, as the plaintiffs are opposing to implead the subsequent purchasers as party defendants, thereafter it will not be open for the plaintiffs to contend that no decree in the counter-claim be passed in absence of the subsequent purchasers. Therefore, non-impleading the subsequent purchasers as defendants on the objection raised by the plaintiffs shall be at the risk of the plaintiffs.”

4. The learned Counsel for respondent No. 1 submits that the property situated on the west side of the suit property bearing Gut No. 300 reflects the name of respondent No. 1. In the plaint the original plaintiffs have specifically contended that original defendants have tried to encroach upon their land and therefore, for just decision of the suit respondent No. 1 is necessary party to the suit. In view of the fact that only because no relief is claimed as against respondent No. 1, that cannot be a ground to reject the application under Order I Rule 10 of the CPC.

5. The Hon'ble Apex Court in the matter of ***Sudhamayee*** (*supra*) has held that a party may not be necessary party or a proper party, but for just decision of the suit the application for impleading third party in the suit can be considered. In the present case the respondent No. 1 is already impleaded as party defendant pursuant to the order passed by the learned trial Court and she has even filed her Written Statement.

6. Therefore, I do not find any reason to interfere in the order dated 24.08.2023 passed below Exhibit 17 by the Civil Judge, Junior Division, Umri in RCS No. 72 of 2023 under Article 227 of the Constution of India.

7. The petition is dismissed. No order as to cost.

(SIDDHESHWAR S. THOMBRE, J.)