



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

WRIT PETITION NO. 13555 OF 2017

VILAS VISHWNATH GHOLAP AND ANOTHER  
VERSUS  
BALU CHANDAR GHOLAP AND OTHERS

...

Advocate for Petitioners : Mr. Rahul R. Karpe  
Advocate for Respondents : Mr. Sanjay N. Gaikwad holding for  
Mr. Niteen V. Gaware

...

**CORAM : SACHIN S. DESHMUKH, J.**

**DATE : 16-10-2025**

**PER COURT:-**

1. Heard learned counsel for the litigating parties.
2. The challenge is raised by the petitioners/original plaintiffs to the order dated 22.09.2017, to the extent of rejecting the impleadment of proposed defendants rendered by the learned Civil Judge Senior Division, Shrigonda, below Exhibit-33 in Regular Civil Suit No.205 of 2014, for removal of encroachment and possession and *mesne* profit.
3. In the interregnum, the Court Commissioner was appointed by the learned trial Court, who submitted a report indicating encroachment committed by the proposed defendants as well as present defendants i.e. respondents, herein. Accordingly, the consequential amendment for impleadment of the proposed

defendants and consequential amendment seeking removal of encroachment as indicated in the report of Commissioner in the plaint taking recourse of Order VI, Rule 17 of the Code of Civil Procedure.

4. The defendants resisted the application, contending that the impleadment of the proposed defendants was not necessary and impleadment would change the nature of the suit.

5. The learned Civil Judge partly allowed the amendment application. Resultantly, the proposed amendment, however, declined the impleadment of proposed defendants. Aggrieved by the same, the petitioners have approached this Court under Article 227 of the Constitution of India.

6. The learned counsel for the petitioners submits that the suit is for removal of encroachment and mesne profit, the impleadment of proposed defendants is necessary in the wake of report of the Court Commissioner, having allowed the proposed amendment. It would neither change the nature of suit nor cause prejudice to the present defendants. Hence, prayed to allow the present application for impleadment of the proposed defendants.

7. Per contra, the learned counsel for the original defendants supported the order and prayed for dismissal of the petition submitting that the liberty has already granted been to the

petitioners to file a separate suit to against the proposed defendants.

8. Admittedly, the suit is instituted for removal of encroachment along with mesne profit. A Court Commissioner was appointed and directed to submit a report. Accordingly, the measurement was carried out by the Commissioner and report records encroachment committed by the proposed defendants.

9. The trial Court, having allowed the proposed amendment, had no reason to deny consequential amendment impleading the proposed defendants. Since, the suit is for removal of encroachment and possession along with mesne profit, the request of the petitioners to implead the proposed defendants ought to have been considered, as it would not change the nature of suit. However, the learned trial Court has ignored the said aspect.

10. The submission of the learned Counsel for the respondents that the liberty has been granted to the plaintiffs for filing a separate suit against the proposed defendants, petition does not deserve any consideration. The report of the Commissioner unfolds led to the discovery of a additional fact I.e encroachment by the proposed defendants upon suit property needs to be adjudicated in present suit itself to avoid multiplicity of proceedings. Moreover, impleadment of the proposed defendants does not cause any prejudice to the present defendants and in fact

the same facilitates effective adjudication of the suit.

11. Apart from aforesaid aspects, this Court, while issuing notice, had stayed the further proceedings of the suit in the year 2017 and the suit has remained pending for over seven years. Therefore, in the interest of justice, it would be appropriate to allow the impleadment of the proposed defendants in the suit for removal of encroachment, possession and mesne profit.

12. Although, the proposed defendants were not originally present at the time of measurement by the Commissioner, the plaintiffs/petitioners will have to establish the report and the necessary opportunity shall be conferred upon the proposed defendants in that regard by the trial Court.

13. Therefore, in my considered view, having allowed the proposed amendment to be incorporated, it was equally necessary to permit impleadment of the proposed defendants in the suit instituted for removal of encroachment. The impleadment would avoid multiplicity of proceedings and would not cause prejudice to the present defendants.

14. Resultantly, the order dated 22/09/2019 below application Exhibit-33 rendered by the learned Civil Judge Senior Division, Shrigonda in Regular Civil Suit No. 205 of 2014, is hereby quashed and set aside.

15. Accordingly, the application for amendment Exhibit-33 is allowed. The petitioners shall carry out necessary amendment within a period of eight weeks from the date of this order.

16. Needless to state that this Court has not expressed any opinion on the merits of the matter. All the issues are kept open.

17. Since the suit is of year 2014, the learned trial Court is requested to make an endeavour to decide the suit expeditiously.

[SACHIN S. DESHMUKH]  
JUDGE

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