

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 13945 OF 2024

Santosh Narayan Kamble ...Petitioner
Versus
Prashant Krishna Bhalekar and ors. ...Respondents

Mr. Saurabh Butala, i/b Satish Raut, for the Petitioner.
Mr. Rakesh Bhatkar, a/w Mohan Devkule, Mohit Dalvi and
Smita Samel, for Respondent No.1.
Mr. S. C. Mangle, for Respondent Nos.2 and 3.
Mr. Tanmay Shembavankar, for Respondent Nos.4 to 10.

CORAM: N. J. JAMADAR, J.

DATED : 14th JANUARY, 2025

ORDER:-

1. The petitioner – plaintiff takes exception to an order dated 6th May, 2024 passed by the learned Civil Judge, Junior Division, Devrukh, on an application preferred by respondent No.1 (Exhibit-29) to implead him as a party defendant to the suit purportedly under the provisions of Order 1 Rule 10 of the Code of Civil Procedure, 1908 (“the Code”), whereby the said application came to be allowed.

2. One Mr. Ketkar was the holder of the land bearing Survey No.5, Hissa No.3A, admeasuring 29Are. Narayan Kamble, the Predecessor-in-title of plaintiff and defendant Nos.3 to 9, Vitthal Govind Chile and Prashant Krishna Bhalekar – defendant No.2

were the tenants of the said land. The parties have their residential houses in the said land. A part of the said land was acquired for Mirya – Nagpur National Highway Project. In the remaining 0.07.62Are land, the plaintiff and defendant Nos.3 to 9 have $1/3^{\text{rd}}$ share and defendant Nos.1 and 2 have $1/3^{\text{rd}}$ share each. Defendant Nos.1 and 2 declined to partition the suit land. Hence, the suit for partition by metes and bounds and injunction.

3. In the said suit, the plaintiff and defendant Nos.1 to 9 arrived at a settlement and Consent Terms were filed. Thereupon respondent No.1, who is the brother of defendant No.2, filed an instant application asserting that the property falling to the share of defendant No.2 proposed to be allotted to the share of defendant No.2 is the joint family property of the applicant and defendant No.2, who is his brother. The applicant also has right, title and interest in the said property. Initially, the house situated in the suit property was mutated in the name of Ganpat Narsu Bhalekar (uncle of applicant - defendant No.2). Later on, the name of defendant No.2 was mutated to the half portion of the said house. An area admeasuring 5597.90 sq. mtrs. out of Survey No.565 was mutated in the name of Radhabai Bhalekar, the mother of respondent No.1 and

defendant No.2. Thus, respondent No.1 is a necessary party to the suit.

4. The plaintiff resisted the application for impleadment.

5. By the impugned order, the learned Civil Judge was persuaded to allow the application observing, *inter alia*, that the relationship between respondent No.1 and defendant No.2 was in dispute. Moreover, there is material to show that Ganpat Bhalekar, the uncle of respondent No.1 and defendant No.2, was one of the tenants of the suit land, half portion of the house situated at the suit land was in the name of Ganpat Bhalekar and the rest in the name of defendant No.2. CTS No.565 was in the name of Radhabai, the mother of defendant No.2 and respondent No.1. Thus, it appeared that respondent No.1 has *prima facie* right and interest in the suit property.

6. Mr. Butala, the learned Counsel for the petitioner, submitted that the plaintiff and defendant Nos.3 to 9, who represent one set of the tenants, have no concern with the *inter se* dispute between defendant No.1 and defendant No.2. Pursuant to the settlement arrived at between the parties to the suit, 1/3rd share of the plaintiff and defendant Nos.3 to 9, of the first part, defendant No.1, of the second part, and defendant No.2, of the third part, can be carved out. It would then be

open for respondent No.1 to work out his remedies against defendant No.2. Therefore, respondent No.1 is neither a necessary nor a proper party to the instant suit. Thus, the learned Civil Judge committed an error in allowing the application. Impleadment of respondent No.1 as a party defendant would alter the character of the suit.

7. The aforesaid submission does not merit countenance. Evidently, the relationship between respondent No.1 and defendant No.2, is not put in contest. Therefore, what is the source from which defendant No.2 claims interest in the suit property assumes salience. The trial court has referred to two factors which bear upon the character of the interest of defendant No.2. One, Ganpat Bhalekar, the uncle of defendant No.2 and respondent No.1, was one of the tenant of the suit land. The house situated in the suit land was initially mutated in the name of Ganpat. Later on, the name of defendant No.2 was mutated to half portion of the said house. Two, the name of the mother of defendant No.2 and respondent No.1 was mutated to CTS No.565. Cumulatively, these two factors *prima facie* indicate the character of the property in which defendant No.2 claims exclusive interest.

8. Mr. Butala attempted to salvage the position by canvassing a submission that house properties are not the subject matter of the suit for partition. This submission is belied by the fact that in the plaint itself, there is a categorical assertion that there were and are residential houses of the parties to the suit, in the suit land.

9. Another factor which bears upon the question of impleadment of the respondent No.1 is that, in the proposed consent terms, the parties have agreed for a declaration that defendant No.2 is the owner of plot No.1 (agreed to be allotted to defendant No.2) and defendant No.2 alone is in possession and enjoyment of the said plot. Thus, the proposed consent decree is likely to impair the rights of respondent No.1. From this standpoint, the presence of respondent No.1 is necessary for an effectual and complete adjudication of all the questions in controversy. In a sense, no effective decree for partition can be passed in the absence of respondent No.1. The learned Civil Judge has, thus, applied the correct test to determine whether respondent No.1 deserves to be impleaded as a party defendant to the suit.

10. The submission on behalf of the plaintiff that respondent No.1 has no right title and interest in the suit property would be

a matter for determination after respondent No.1 is impleaded as party defendant. Therefore, no interference is warranted at this stage.

11. The petition stands dismissed.

12. Needless to clarify that the plaintiffs or for that matter defendant No.2 would be at liberty to raise the contention that respondent No.1 has no right, title and interest in the suit property.

13. The observations are confined to determine the question of impleadment only and may not be construed as expression of opinion on the right, title and interest of Respondent No.1, in the suit property.

[N. J. JAMADAR, J.]