

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.16281 OF 2024
WITH
INTERIM APPLICATION NO.14423 OF 2024

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Narayan Hanumanta Rokade and Others

...Petitioners

vs.

Arjun Keru Rokade and Others

...Respondents

Mr. Sachin Gite, for the Petitioners.

Mr. Satyajee Dighe i/b. Mr. Prajit Shahane, for the Applicant in IA
and for Respondents in the Petition.

CORAM : N. J. JAMADAR, J.

DATE : JANUARY 16, 2025

ORDER

1. Rule. Rule made returnable forthwith and with the consent of the counsel for the parties, heard finally.

2. The petitioners/ original plaintiffs take exception to an order dated 26th June, 2024 passed by the learned Civil Judge, Nashik whereby the Application (Exh.198) preferred by the plaintiffs to add proposed defendant Nos. 26 to 44 as party- defendants to the suit and make necessary averments in the plaint purportedly under the provisions of Order I Rule 10 and Order VI Rule 17 of the Code of Civil Procedure, 1908 came to be rejected.

3. The petitioners instituted a suit for declaration and perpetual injunction in respect of an agricultural land bearing Gat No. 314/5 (old gat No.314/1/1 and old survey No. 260/1) admeasuring 66 R.

4. Initially, the plaintiffs filed an application for amendment in the plaint (Exh. 187) to assert that, during the pendency of the suit, there was change in the nature of the property and the old Gut No. 314/5 came to be converted into Gat Nos. 309/1/31P, 311P, 312, 313/1P, 314/1, 314/2, 314/5, 314/6 and 328. By an order dated 4th March, 2024 the said application came to be allowed. The plaintiffs thereafter preferred the instant application seeking further amendment in the plaint to implead the proposed defendant nos. 26 to 44 whose names were mutated to the record of rights of Gut numbers into which the suit property i.e. original Gat No. 314/5 came to be converted.

5. By the impugned order, the learned Civil Judge rejected the application holding, inter alia, that the proposed defendant had no concern with the subject matter of the suit. They were neither necessary nor proper parties.

6. Mr. Gite, learned counsel for the petitioners submitted that the suit property has been merged into other properties, and an integrated layout has been sanctioned. The proposed defendants are the persons who have acquired various plots out of the said layout. It is, therefore, necessary to implead the proposed defendants as the party defendants for a complete adjudication of the dispute.

7. Mr. Dighe, learned counsel for the respondents, countered the submissions on behalf of the petitioners. It was submitted that the plaintiff's claim is restricted to 66R land. By the proposed amendment, the petitioners seek to expand the subject matter of the dispute exponentially, over which the petitioners have no proprietary title. Moreover, since the suit was primarily for injunction asserting that the plaintiff were in possession of the suit property, the proposed amendment completely alters the character of the suit.

8. The submission on behalf of the respondents carries substance. From the perusal of the plaint, it becomes abundantly clear that the petitioners claimed right, title and interest in the suit property bearing Gat No. 314/5 admeasuring 66R only and the relief of perpetual injunction to restrain defendant Nos. 14 to 25 from causing obstruction to the possession of the plaintiff over the suit property. The relief of declaration qua the instruments executed in favour of the defendant No. 22 and, subsequently, in favour of defendant Nos. 23 to 25 is also in respect of the said suit property.

9. It is true, pursuant to an order dated 4th March, 2024 on the Application (Exh. 187), the plaintiff amended the plaint to bring on record the new Gat numbers into which Gat No. 314/5 was

converted. However, that does not imply that the subject matter of the suit would cover an area beyond the area over which the plaintiffs claimed propitiatory title.

10. Mr. Gite endeavored to urge that in the Deed of Partition executed on 30th June, 2023, there is a reference to the suit property bearing survey No. 314/5. Under the said partition Deed, the defendants and proposed defendants have got various plots allotted to their respective shares. Therefore, it is necessary to amend the plaint and implead the proposed defendants as party defendants to the suit. The aforesaid submission does not merit countenance. The plaintiffs do not claim any semblance of title over the properties which are included in the said Partition Deed, apart from property bearing Gat No. 314/5.

11. The nature of the suit cannot be lost sight of. It is primarily for the protection of possession of the plaintiffs over the suit property bearing Gat No. 314/5 admeasuring 66R. In that view of the matter, the plaintiffs cannot be permitted to expand the scope of the suit so as to include the properties over which they claim no right, title and interest and implead the proposed defendants by asserting that after an integrated layout was sanctioned, the identity of the property is lost. The impleadment of the proposed defendants is, therefore, not necessary for a complete and effectual adjudication of

the disputes between the parties. On the contrary, the impleadment of the proposed defendants has the propensity to embrace the trial.

12. I am, therefore, inclined to hold that the learned Civil Judge correctly exercised the discretion not allow the amendment and implead the proposed defendants as party defendants to the suit. The petition thus deserves to be dismissed.

Hence, the following order.

ORDER

1] The petition stands dismissed.

2] In view of the disposal of the petition, the Interim Application also stands disposed.

(N. J. JAMADAR, J.)