



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 1050/2022

Sau. Vidya w/o Vinayak Raut and ors.

Vs.

The State of Maharashtra, thr. Collector, Wardha and ors.

.....
Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders

Court's or Judge's order

.....
Mr. D.R. Bhoyar, Advocate for the petitioners.

Ms Deepa I. Charlewar, AGP for respondent Nos.1 and 2/State.

CORAM : R.M. JOSHI, J.

DATED : 18.06.2025

1. The writ petition takes exception to the order dated 21.10.2021 passed below Exh.39 in RCS No.72/2019 whereby the application filed by the interveners for adding them as party defendants under Order I Rule 3 read with Order I and Rule 10 of the Code of Civil Procedure, 1908, came to be allowed.

2. There is no dispute about the fact that the petitioners/plaintiffs filed suit being RCS No.72/2019 for declaration, permanent and mandatory injunction. The relief prayed by the plaintiffs in the suit indicates that they are seeking an injunction against the government from creating

a parallel way (pandhan way) from their field.

3. The interveners are adjoining land owners. In their application for joining them as party defendants, it is claimed that they have a right in the pandhan way, which is sought to be enjoined by the plaintiffs. It is their contention that since they have an interest in the subject matter, they are proper parties to the suit.

4. This application was opposed by the plaintiffs with a contention that no relief has been sought against defendants and that interveners are neither necessary nor proper party to the suit. It is claimed that the plaintiffs are entitled to protect their property by seeking an injunction.

5. The Trial Court, after hearing both sides, passed the impugned order and directed the interveners to be arrayed as defendant Nos. 7 to 15 in the suit. Being aggrieved by this order, the petitioners have filed this petition.

6. Learned counsel for the petitioners submits that the trial Court has committed error in

not considering the fact that the added defendants are not necessary or proper parties to the suit and he drew attention of this Court to the pleadings and relief sought before the trial Court. He claims that the order passed by the trial Court is contrary to the law on the subject. To support his submissions he has placed reliance on the following decisions, which are as follows:-

1. ***Gopikabai Nathuram Malewar and another Vs. Bapurao Mahadeorao Surkar*** reported at **1995 (2) Mh.L.J. 818.**
2. ***Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and others*** reported at **(1992) 2 SCC 524.**
3. ***Mrs. Sulbha Devendra Kokate Vs. Mrs. Surekha Kokate and others*** reported at **2022(1) ALL MR 152**
4. ***Harisha Ramdeo Baheti (Dr.) and others Vs. Municipal Corporation of Amravati*** and another reported at 1987(3) Bom. C.R. 19.

7. Heard learned AGP for the State.

8. None for the contesting respondents.

9. To enable any 3rd party to be joined as a party, defendant to a suit, it must be shown that such person is a necessary or proper party. Whether a person is necessary or proper party would depend on facts and circumstances of each case.

10. In the instant case, the plaintiffs are seeking an injunction against the government from creating a pandhan way from their field. As against this, the added defendants claimed that they have a right over the said pandhan way. Thus, at this stage, it can be said that *prima-facie* there is an interest of the added defendants in the subject matter of the suit and that any relief granted therein would directly affect their interest adversely.

11. Even if for the sake of argument it is accepted that they are not a necessary party as their presence may not be necessary or the effective decision of case but they are certainly a proper party to the suit, for the reason that they have interest in the subject matter and any order passed therein would effect their interest. The order impugned correctly indicates that the issue as to the rights of the added defendants would be a question for

determination on evidence and the same cannot be decided at this stage

12. Insofar as the judgments cited by the learned counsel for the petitioners, in the case of ***Gopikabai Nathuram Malewar and another*** (*supra*) the issue before this Court was as to whether at the instance of the defendants the stranger could be added as a party to the litigation. There was no issue involved herein as to whether the application filed by the party to claim himself to be a necessary or proper party can be allowed or not. As far as judgments in cases of ***Ramesh Hirachand Kundanmal*** (*supra*) and ***Mrs. Sulbha Devendra Kokate*** (*supra*) and ***Harisha Ramdeo Baheti*** (*supra*) are concerned, the issue involved therein was as to whether in a case where the corporations/ local authorities have issued notice to the plaintiffs in respect of his property, whether the complainant or neighbour as the case may be would have any interest in subject matter of the suit. It is held that since such complainant or neighbour would have no interest in the subject matter of the suit, they are not proper parties. In those cases, it is held that in their absence the suit can be decided and therefore,

they are not necessary party to it. Needless to say the judgments are passed in a totally different set of facts, which are not applicable to the present case.

13. The learned trial Court has rightly taken into consideration the provisions of civil procedure code and the case sought to be made out before it by the parties. For want of any perversity, no interference is called in order impugned in the exercise of the writ jurisdiction.

14. Writ petition stands dismissed.

(R.M. JOSHI, J.)