



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

Writ Petition No. 214 of 2025

[Jagannath s/o Punjaji Sirsat ..vs.. Smt. Mangala w/o Gajanan Avtade and anr.]

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

Court's or Judge's orders

Mr. N. A. Waghmare, Advocate for the petitioner

CORAM : ANIL L. PANSARE J.

DATED : 02-04-2025

Heard.

2. The challenge is to order dated 21-2-2024 passed by the trial Court rejecting application filed by the petitioner – original defendant seeking dismissal of suit for non-joinder of necessary party.

3. The trial Court took a view that suit cannot be rejected for misjoinder or non-joinder of party. Thus, the trial Court was of the view that the party sought to be added as defendants was/were not necessary party.

4. In this context, a specific query was made whether the persons to whom the petitioner intends to add as party – defendant is/are necessary party, the counsel for the petitioner answered in the negative.

5. Thus, it is apparent that though the petitioner has filed application for rejection of suit on the ground of failure of plaintiff to add some persons, who, according to the petitioner, were necessary party, who are in fact known to the petitioner to be not a necessary party.

6. It appears that the petitioner had filed proceedings against six persons before the Mamlatdar. The Mamlatdar allowed the suit filed by the petitioner. Two out of six persons filed suit against the petitioner with a prayer that order passed

by the Mamlatdar is not binding on them. Thus, four out of six persons against whom the order was passed, chose to not file suit. Two persons, who challenged the order have made petitioner party defendant, who is a necessary party to the suit. As regards other four persons, since they have chosen to not file suit, the respondent did not make them party. No relief is sought against them nor will their rights be affected, if the suit is decreed. In that sense, they are not necessary party to the suit. In fact and as noted above, the petitioner admits that they are not necessary party to the suit.

7. Learned counsel for the petitioner has, however, relied upon the judgment of the Supreme Court in the case of ***Kasturi Vs. Iyyamperumal and others [(2005) 6 SCC 733]*** to contend that the persons, who are proper parties could also be joined. However, such is not the case of the petitioner. The petitioner sought rejection of the plaint on the ground that these four persons are necessary party. The trial Court found that these four persons are not necessary party and, accordingly, rejected the application.

8. The order appears to be in consonance with the provisions of law. No interference is, therefore, called for in writ jurisdiction under Article 227 of the Constitution. Writ petition is dismissed *in limini*.

(Anil L. Pansare, J.)