



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

WRIT PETITION NO. 1222 OF 2019

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| 1) Nirmaladevi w/o Nandkishore Murarka
age : 63 years, Occu : Agriculturist

2) Ravi Nandkishore Murarka,
age : 40 years, Occu : Agriculturist,
Both R/o – Gandhi Chowk, Shegaon,
Tq. Shegaon, Dist. Buldhana | } | .. Petitioners
(Original Plaintiffs) |
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Versus

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| 1) Amit Ramesh Deshmukh,
age : 35 years, Occu : Business,
R/o – Nagzari Road, Shegaon,
Tq. Shegaon, Dist. Buldhana

2) Rameshrao Gopalrao Deshmukh,
age : 67 years, Occu : retired
R/o – Nagzari Road, Ward No.25,
Shegaon, Tq. Shegaon, Dist. Buldhana

3) Santosh Yashwant Tayade,
age : 34 years, Occu : Labour
R/o – Bhim Nagar, Nagzari Road,
Shegaon, Tq. Shegaon, Dist. Buldhana | } | .. Respondents
(Original defendants) |
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 Mr. Pushkar Deshapnde, Advocate h/f. Mr.R.L.Khapre, Senior
 Advocate for Petitioners.

Mr. H.R.Gadhia, Advocate for respondent Nos.1 to 3.

CORAM : ABHAY J. MANTRI, J.

DATED : JANUARY 09, 2025

ORAL JUDGMENT

Rule. Rule is made returnable forthwith. Heard finally, with the consent of the learned counsel, appearing for the parties.

(2) The petitioners being aggrieved by the order dated 24/01/2019 passed by learned Joint Civil Judge Junior Division (Jt.C.J.J.D.), Shegaon (for short- '*the learned Judge*') below Exh.51 in Regular Civil Suit No.22/2013, thereby allowed the application filed by the intervenors and directed the petitioners to add them as defendants.

Brief facts of the case are as follows.:-

(3) It is a case of the petitioners/original plaintiffs that, based on the sale deed dated 21/05/2001, they got the ownership and possessory right over the suit property. However, the defendants were obstructing their possession; therefore, they have filed a suit for a declaration of their ownership and an injunction. As against, the defendants resisted the claim, contending that petitioners do not possess the suit property, but intervenor – Ramesh, the father of defendant – Amit, being a member of the Hindu joint family, is in possession and; therefore, he prayed for dismissal of the petition.

(4) Based on the said pleadings, the trial Court has framed the issues; thereafter, plaintiffs adduced evidence subsequent to that the intervenors, i.e., the father of the defendant with one Santosh Tayde, had filed an application to implead them as defendants in the suit, contending that they are in possession of the suit property. Therefore, they are necessary parties to the proceedings. The said

application was resisted by the plaintiffs, asserting that they were not seeking any relief against the intervenors, nor were they necessary parties to the proceedings. They prayed for the dismissal of the application.

(5) After considering the rival contentions of the parties, the learned judge allowed the said application, holding that both parties to the suit have to prove their possession over the suit property. The intervenor, Ramesh, has claimed possession of the suit property for the last 50 years and, therefore, directed the plaintiffs to add them as a party to the suit. As aggrieved by the said order, the original plaintiffs/petitioners preferred this petition.

(6) Learned Counsel for the petitioners vehemently submitted that petitioners are the '*dominus litis*' of their own suit. They may choose the person against whom they want to seek the relief of declaration and an injunction, and they cannot be compelled to sue a person against whom they do not seek any relief. He further submitted that in 2001, the petitioners purchased the property. Since they are in possession of the suit property, to this date, neither the defendant nor the intervenors have challenged the said sale deed or filed any suit for partition and possession with respect to the suit property. *Moreover*, the plaintiffs are not claiming any relief against the intervenors; therefore, the intervenors are not necessary parties to the proceedings.

However, the learned judge has not considered the said settled position of law and erred in allowing the application; therefore, he has prayed for allowing the present petition by quashing and setting aside the said order.

(7) Mr. Gadhia, learned Counsel for the respondents, strenuously opposes the claim of the petitioners, contending that the intervenors are in possession of the suit property for the last 50 years and, therefore, they are necessary parties to adjudicate the dispute between the parties. The learned judge rightly considered the fact, allowed the application, and directed the petitioners to implead them to be defendants.

(8) In order to substantiate his contentions, learned Counsel Mr. Gadhia has relied upon the judgment dated 11/10/2022 passed by the Aurangabad Bench of this Court in **Ashok s/o Babarao Patil vs. The State of Maharashtra, Writ Petition No.10493 of 2022** and drew my attention to paras 19 and 20 and contended that in view of the law laid down in the said judgment passing of the impugned order by the learned judge is just, proper and no interference is required in it.

(9) Alternatively, he has argued that in case this Court comes to the conclusion that the learned judge has committed an error of law or fact or just because another view than the one has taken by the

sub-ordinate Court, is a possible view, in that case, this Court generally shall not exercise its extraordinary jurisdiction to interfere in the said findings.

(10) To buttress his submissions, he has relied upon the judgment of the Principal seat at Bombay in the case of ***Dilip Pandurang Thopate vs. Ashokrao V. Thopate and others in Writ Petition 1510 of 2022*** and drew my attention to para 17 of the said judgment and submitted that the impugned order is just, proper and no interference is required in it. Hence, he urged for the dismissal of the petition.

(11) I have appreciated the rival contentions of the parties and perused the impugned order, record and the judgments cited by learned Counsel for the respondents.

(12) At the outset, it appears that the petitioners, based on the sale deed dated 21/05/2001, have filed a suit for declaration and permanent injunction against the defendant, as he tried to obstruct their possession over the suit property. The suit was filed on 01/04/2013. The defendant – Amit, resisted the plaintiffs' claim, contending that his father, a member of the joint family, is in possession of the suit property for the last 50 years. Therefore, he has prayed for the dismissal of the suit.

(13) It further appears that plaintiffs/petitioners have also filed an application for the grant of interim injunction, and the same was granted in their favour on 01/04/2013 and was confirmed on 28/01/2016; the said order is in force till this date. On perusal of the said order, it seems that the learned judge *prima facie* held that the plaintiffs are in possession of the suit property. The defendant, Amit, or his father have not challenged the order. Had it been the fact that the defendant, Amit, and his father were aggrieved by the said order, then certainly they would have challenged the same. Non-challenging the said order leads to drawing adverse inferences against them that they were/are not aggrieved by the said order. Based on the pleadings of the parties, issues were framed, and plaintiffs also adduced evidence on 27/09/2018. Only after that did the intervenors file this application to implead them as a party.

(14) Though the intervenors have contended that they are in possession of the suit property as owner, the learned Counsel for the respondents failed to demonstrate from the document that the intervenors are in possession of the suit property. Despite the specific query put to him, he failed to point out from the document that intervenors are in possession of the suit property to claim their interest in the suit property. Likewise, since 2001, the intervenors or defendants have not challenged the sale deed executed in favour of the

petitioners by the co-owner of the suit property. So also, till the filing of the application, intervenors have not filed a suit for partition and possession of the suit property. Learned Counsel for the intervenors, despite specific query put to him, failed to answer the same.

(15) In the above background, a short question arises as to "whether the intervenors are necessary parties to be added in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit".

(16) Perusal of the impugned order, it seems that the learned trial Court has recorded its findings in the absence of any documents produced by the intervenors to substantiate their contention that they are in possession and with a cryptic and vague reasoning has observed that "*as intervenors are claiming that they are in possession of the suit property, therefore, they are necessary party.*" In fact, the plaintiffs are not claiming any relief against the intervenors. Based on the sale deed, plaintiffs are claiming their ownership and possessory right over the suit property; therefore, in my view, the intervenors are not necessary parties to enable the Court to effectually and completely adjudicate upon and settle all the questions involved in the suit.

(17) In the case of **Ashok Patil** (supra), the plaintiff therein sought relief against the trust that it does not have any right title and

interest over the suit property. However, he failed to make the Trust a party to the suit. Therefore, this Court has held that merely because the plaintiff does not choose to implead a person is not sufficient for rejection of an application for being impleaded. If the Court feels it appropriate that any particular party's presence is necessary before the Court for adjudicating upon the issue involved in the suit. In that case, the Court is empowered under Order I Rule 10(2) of the Code to direct the addition of such a party to the suit. However, the facts differ in the case at hand from the aforesaid judgment. Therefore, the observations made in the said judgment are not helpful to the respondents/intervenors in support of their contentions.

(18) In the case of **Dilip Thopate** (supra), this Court has observed as follows:-

“It is further held that, in the exercise of its power of superintendence, the High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it is a possible view. In other words, the jurisdiction has to be very sparingly exercised. That, the power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court.”

(19) However, in the case at hand, the plaintiffs are not claiming any relief against the intervenors. Therefore, they are not necessary parties to adjudicate the controversy between the parties,

and their presence is also not required. As such, the question of the possibility of two views does not arise. Hence, the observations made in the said judgment are also not applicable to the case at hand.

(20) In the wake of the above, it appears that the learned judge has erred in observing that the intervenors are claiming possession over the suit property. Therefore, they are necessary parties. In fact, the said finding appears to be contrary to the facts on record, as the petitioners are not claiming any relief against the intervenors. *Moreover*, the intervenor – Ramesh, is the father of the defendant – Amit. Considering the nature of the relief claimed by the plaintiffs, in my view, the intervenors are neither necessary nor appropriate party to implead them in the suit as defendants, as no relief has been claimed against them.

(21) In view of the above, the petition is allowed in terms of prayer clause (1). No order as to costs.

(22) Rule is made absolute in the above terms.

(23) Inform the learned Trial Court accordingly.

[ABHAY J. MANTRI, J.]