



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.
WRIT PETITION NO.4136 OF 2022

PETITIONERS
(Ori. Plaintiffs)

- : 1. **Ravindra Tulsiram Naik,**
Aged about 49 years, occ: service.
2. **Surendra Tulshiram Naik,**
Aged about 44 years, occ: social work

Both R/o C/o P N Jarude, Near
Hanuman Mandir, Ravi Nagar,
Amravati.
3. **Sau. Suchita Dilip Raut,**
Aged about 50 years, occ: service
R/o Baliram Kadu Chawl Asegaon
Section 28, Ulhas Nagar -4, Dist.
Thane.
4. **Padma Tulshiram Naik,**
Aged major, occ; retired R/o 3-15,
Lahanuji Nagar Near Head Post
Office, Wardha.
- ..VERSUS..**

RESPONDENTS
(Ori. Defendants)

- : 1. **Sanjay Rambhau Naik,**
Aged about 55 years, occ: service R/o
Type B-2/13, R.C.F. Colony, Chembur
East Mumbai.
2. **Manoj Rambhau Naik,**
Aged about 46 years, occ: service
C/o R Z Naik, Prabhat Colony
Shilangan Road, Amravati.
3. **Sandhya Vijay Lohakpure,**
Aged about 53 years, occ: housemaker
C/o Dr. Vijay Lohakpure R/o Near
Om Mangal Karyalaya Gaurakshan
Road, Akola.

4. **Sau. Sangita Nilkanth Lohakpure,**
Aged 48 years, Occu.: Household,
C/o. Nilkanth Shrikrushna Lohakpure,
R/o. Near Om Mangal Karyalaya,
Gaurakshan Road, Akola.
5. **Sau. Manta Nandkishor Patil,**
Aged 51 years, Occu.: Household, R/o.
Main Fail, Dist. Washim.
6. **Ashok Ramchandra Gujar,**
Aged major, Occu. Business,
R/o. Near Dnyaneshwar Mandir,
Shinde Nagar, Yavatmal,
Tq. & Dist. Yavatmal.
7. **Smt. Anjali Vijayrao Gujar,**
Age 40 years, Occu. Housewife.
8. **Anniruddha Vijayrao Gujar,**
Age 18 years, Occu. Education.
9. **Anagha Vijayrao Gujar,**
Age years, Occu. Education,
R-7 to 9- C/o. Ashok Ramchandra
Gujar, Near Dnyaneshwar Mandir,
Shinde Nagar, Yavatmal, Tq. & Dist.
Yavatmal.
10. **Dr. Kishor Ramchandra Gujar,**
Aged 45 years, Occu. service,
R/o. Shinde Nagar, Yavatmal, Tq. &
Dist. Yavatmal.
11. **Sau. Sharda Prakash Naik,**
Age 48 years, Occu. Housewife, R/o.
Behind Medical College, Wanjari
Nagar, Nagpur, Tq. & Dist. Nagpur.
12. **President, Shri Saibaba Gruhanirman
Sanstha,** Saibaba Nagar, Badnera Road,
Amravati.

13. **The Deputy Registrar,** Cooperative Societies, Amravati.

14. **Sanjay Rambhau Naik,**
Age 55 years, Occu.: Service, R/o. Typ B-2/13, R.C.F. Colony, Chembur (E), Mumbai.

Mr. D. Pathak, Advocate for Petitioners.
Mr V. R. Chaudhari, Advocate for Respondent(s).

CORAM : **NANDESH S. DESHPANDE, J.**
RESERVED ON : **16th OCTOBER, 2025.**
PRONOUNCED ON : **3rd NOVEMBER, 2025.**

JUDGMENT

1. **Rule.** Rule made returnable forthwith. Heard finally with the consent of learned counsels appearing for the parties.

2. The present petition challenges the order dated 04.02.2022 passed by the 9th Joint Civil Judge Senior Division, Amravati below exhibit 183 in Regular Civil Suit No.395 of 2012 by which, the learned Trial Court rejected the application filed by the original plaintiffs for seeking addition of party under Order 1 Rule 10 of the Code of Civil Procedure.

3. Facts of the case in brief are as under :

The petitioners before this Court are the original plaintiffs. They filed a suit bearing Regular Civil Suit No.395 of

2012 seeking possession and declaration of the suit property before the Court of Joint Civil Judge Senior Division, Amravati. In response to the suit summons issued by the learned Trial Court, the original defendant No.1 filed his written statement and the parties went on trial after framing of issues. On 10.04.2017, the evidence on affidavit by the original defendant No.1 – Rambhau Zingusa Naik came to be filed and on 14.07.2021, the evidence on affidavit of the legal heirs of the original defendant No.1 also came on record. On 20.10.2021, the original plaintiffs i.e. petitioners herein filed an application under the provisions of Order 1 Rule 10 of the Code of Civil Procedure seeking to add Sau. Shakuntala Omprakash Joshi as a defendant in the said suit. The learned Trial Court after hearing the parties was pleased to reject the said application. It is this order which is impugned in the present petition on the grounds stated in the memo of the petition.

4. I have heard Mr. Deoul Pathak, learned counsel appearing on behalf of the petitioners and Mr. V. R. Chaudhari, learned counsel for the Respondent No.1.

5. Mr. Deoul Pathak, learned counsel appearing on behalf of the petitioners strenuously argued that even if the

evidence on affidavit on behalf by the original defendant No.1 was filed on record on 10.4.2017, further evidence on the basis of said affidavit was not recorded. It was, therefore, not within the knowledge of the present plaintiffs regarding the transfer of suit property in favour of Sau. Shakuntala. It is, therefore, his submission that the learned Trial Court has erred in rejecting the application.

6. Per contra, Mr. V. R. Chaudhari, learned counsel appearing on behalf of the legal heirs of original defendant No.1 opposing the submissions made by the learned counsel for the petitioners states that it was well within the knowledge of the present petitioners that the property stood transferred and therefore, they were negligent in adding her as a party and now they cannot be sued after three years from the date of their knowledge.

7. In the light of these submissions, I have perused the record of the matter. As can be seen from the record, the learned Trial Court has recorded that the original defendant No.1 Rambhau had filed his affidavit of examination-in-chief on 10.04.2017 wherein, he has specifically mentioned that the suit

property has been sold to Sau. Shakuntala Joshi vide registered sale deed dated 14.05.2012. It has further gone on to record that the learned counsel for the plaintiffs have received the copy of the evidence on affidavit on 04.07.2017. In the opinion of the learned Trial Court, therefore, the application seeking addition of party filed on 20.10.2017 is clearly beyond three years from the date of knowledge; even assuming the date of knowledge dated 04.07.2017 i.e. the date on which the copy of evidence on affidavit of deceased Rambhau was received by the counsel for the plaintiffs. It is, therefore, clear that the plaintiffs were not diligent to go through the averments in the evidence on affidavit wherein, it was clearly stipulated about the transfer of property, the name of transferee and the date on which it was transferred. Only because the evidence on affidavit and the contents thereof are not verified by the witness by coming into the witness box during his further examination-in-chief cannot absolve the petitioners from their duty to ascertain the facts regarding transfer of property mentioned therein.

8. Therefore there was no reason for the plaintiffs to wait for the same to be verified during further examination-in-chief. This conduct of the plaintiffs is totally negligent and therefore, they cannot take benefit of the same. The learned Trial Court has, therefore, rightly held that the fact of transfer of property on 14.05.2012 was well within the knowledge of the plaintiffs since 04.07.2017. There is no perversity in the findings of the learned Trial Court and the petition is therefore without any merit and is liable to be dismissed. I therefore proceed to pass the following order.

9. The writ petition is **dismissed**. Interim order stands vacated. Rule stands discharged.

(NANDESH S. DESHPANDE, J.)