



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

WRIT PETITION NO.5870 OF 2023

PETITIONER :- Shankar S/o Sheshrao Kavhar
Aged about 32 years, Occ.
Agriculturist, R/o. Waghi Bk. Tq.
Malegaon, District Washim.

..VERSUS..

RESPONDENTS :- 1) Bhagwat Haribhau Ghayal,
Aged about 66 years, Occ.
Agriculturist, R/o. Borala Jahagir, Tah.
Malegaon, Distt. Washim
2) Rameshwar Narayan Jatale, aged
about 53 years, Occ. Agriculturist, R/o.
Borala Jahagir, Tah. Malegaon Distt.
Washim.

Mr.Rahul Ghuge, Advocate for Petitioner.
Mr Abhijeet P. Deshmukh, Advocate for the Respondents.

CORAM : **ROHIT W. JOSHI, J.**

DATE : **06.11.2025**

ORAL JUDGMENT :

1) **Rule.** Rule made returnable forthwith. Heard finally
with the consent of the learned counsel for the respective
parties.

2) The present petition is filed by the original defendant in Regular Civil Suit No.55 of 2021, being aggrieved by the order dated 07.08.2023 passed by the learned Trial Court on the application at Exh.30 in the said suit. The present petitioner, who is the original defendant, has filed a counterclaim in the said suit. The relief claimed in the counterclaim is of perpetual injunction against the plaintiff, restraining him from disturbing the possession of the defendant over the suit property. Defendant No.1 claims to have purchased portion admeasuring 1.19 H.R., from and out of land bearing Gat No.311, situated at Village Borala Jahgir, Tahsil Malegaon, Dist. Washim. This Gat No.311 is a vast tract of land admeasuring around 8.75 H.R.

3) It is the contention of the defendant that although the sale deed dated 19.04.2002 the Gat number of the property is mentioned as 252, the boundaries of the property mentioned in the sale deed clearly indicate that the sale deed pertains to a portion of land admeasuring 1.19 H.R., in Gat No.311 and not Gat No.252. It will also be pertinent to mention that the vendor of the defendant/petitioner is the father of the present respondent No.2.

4) Respondent No.2 filed application under Order 1, Rule 10 of the Code of Civil Procedure, seeking impleadment in the

counterclaim as a defendant, on the ground that in the event, the counterclaim filed by the defendant is decreed, there is a likelihood of the defendant disturbing possession of respondent No.2 over the land bearing Gat No.311, owned by him. The learned Trial Court has allowed the said application vide impugned order dated 07.08.2023. The learned Trial Court has categorically held that the petitioner was not claiming any relief against the proposed defendant i.e. present respondent No.2. It is, however, held that there is some confusion with respect to the correct Gat number of the suit property, forming the subject matter of the counterclaim and, therefore, interest of the proposed defendant (respondent No.2) was involved. In view of the above, the learned Trial Court has found that the proposed defendant (respondent No.2) was a necessary party.

5) Mr. Ghuge, learned Advocate for the petitioner/defendant, contends that the observations made by the learned Trial Court will, at best, imply that the proposed defendant (respondent no.2) would be a proper witness, but not a defendant to the suit. He contends that since the defendant is the master of the counterclaim, the application for impleadment of a third person as a defendant in the counterclaim should not have been allowed against the will of the defendant/counterclaimant.

6) Per contra, the learned Advocate for contesting respondent No.2, who is the proposed defendant argues that since the foundation of the counterclaim is based on ownership and there is genuine confusion with respect to ownership of the defendant over land bearing Gat No.311, it will be appropriate that respondent No.2 is arrayed as a party in the counterclaim. He contends that the rights of respondent No.2 will clearly be affected by virtue of the adjudication of the counterclaim since the injunction in counter claim is claimed on the basis of ownership. The learned Advocate further contends that the issue as to whether the defendant/counter-claimant is the owner of Gat No.252 (as mentioned in the sale deed) or Gat No.311 (as claimed in the counter claim) cannot be decided in the absence of respondent No.2 (proposed defendant).

7) It is not in dispute that although the petitioner/counter-claimant claims ownership over a portion of land bearing Gat No.311, the Gat number mentioned in the sale deed is Gat No.252. It is also obvious that the relief of perpetual injunction, although it is claimed only against respondent No.1 (the original plaintiff), is based on ownership. It is not in dispute that father of the proposed defendant(respondent No.2) is vendor of petitioner/counter-claimant. In the considered opinion of this Court, it will

be appropriate that the issue of ownership is decided in the presence of the legal heir of the vendor of the counter-claimant/petitioner. Since the issue of ownership is involved in the counterclaim, it will be appropriate that respondent No.2 in the present petition is arrayed as a defendant in the counterclaim.

8) In view of the aforesaid, writ petition stands **dismissed**.

Rule is discharged, with no order as to costs.

(ROHIT W. JOSHI, J.)

Tanmay..