



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

Writ Petition No. 7671 of 2023

[Sh. Siddharth S/o Gholuji Gajbhiye and ors. ..vs.. Smt. Raibai
Wd/o Vasantrao Dhakulkar and ors.]

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

Court's or Judge's orders

Mr. A. T. Purhohit, Advocate for the petitioners
Mr. S. S. Sharma, Advocate for respondent nos. 2, 3, 7 to 9, 13 to 16

CORAM : ANIL L. PANSARE J.

DATED : 08-04-2025

Heard.

2. Respondent no. 1 filed suit for partition and possession against Manjulabai Jambutkar, Rekha Jambutkar, Maya Jambutkar and Archana Jambutkar. These defendants have been not made party to the petition for the reasons best known to the petitioners. The petitioners were added as defendant nos. 6, 7 and 9 upon an application made by them seeking intervention in the suit.

3. Some other persons also filed application (Exhibit 111) for intervention. They were added as defendant nos. 10 to 19. Order to that effect was passed on 16-1-2019. Few more persons filed similar such application (Exhibit 114), which came to be allowed on 25-6-2019 and they were added as defendant nos. 20 to 29. These defendants viz. Defendant nos. 10 to 29 filed application, Exhibit 119 seeking transposition of their names as plaintiffs and the original plaintiff as defendant no. 10. The reasons for such request was that they have purchased part of suit property from the original owner. Respondent no. 1 – plaintiff is daughter of original owner. The trial Court was pleased to allow the application vide impugned order dated 3-12-2020.

4. While issuing notice, this Court, on 7-12-2023, made following observations.

“2. The defendants who were initially in terms of the order below Exhibits-111 and 114 were permitted to be added as defendants to the suit on account of they being purchasers of the suit property on an application filed by them have been permitted to be joined as co-plaintiffs. The impugned order is dated 03.12.2020 (page 298) which indicates that there is substantial delay of nearly 3 years in challenging the same, for which Mr Purohit, learned counsel for the petitioners in order to show his bona fides agrees to deposit cost of Rs.35,000/- by 15.12.2023.”

As could be seen, the order dated 3-12-2020 is challenged after about three years and accordingly, petitioners were directed to deposit Rs. 35,000/-.

5. I have heard both sides on the ground of delay as well as on merit. As regards delay, there is no justification coming from the petitioners nor is there any justification for not making original defendant nos. 1 to 4 as party respondents. So far as merits are concerned, there is no dispute that the applications, Exhibit Nos. 111 and 114 filed for intervention was uncontested in as much as the petitioners and respondent no. 1 did not file reply. The grounds stated in the said applications were the grounds for seeking intervention. Thus, the trial Court found that the intervenors, having purchased certain part of the suit property from the predecessor of respondent no. 1, should be allowed to intervene and thereafter should be allowed to prosecute the suit as plaintiffs. In other words, the trial Court permitted the intervenors to become co-plaintiffs.

6. It is well settled that in a suit for partition, the defendants can also be said to be plaintiffs. The argument put forth by the petitioners' counsel that there has to be oneness of interest to transpose defendants as plaintiffs, though is correct,

since the intervenors have purchased part of suit property, they can also prosecute the suit for partition along with respondent no. 1.

7. At this stage, learned counsel for the respondents submits that the suit proceeded without written statement against respondents and their evidence was closed, because they did not enter witness box. He further submits that the plaintiffs argument is over and the matter is fixed for argument of defendants (present petitioners).

8. Thus, it appears that right from inception, the petitioners are extremely casual and negligent. They did not file reply to applications, Exhibit Nos. 111 and 114. They failed to file written statement. They failed to adduce evidence. They have not joined original defendant nos. 1 to 4 as party respondents. They failed to challenge impugned order within time and, therefore, were called upon to deposit Rs. 35,000/- to show *bona fide*. It is thus evident that the only moto to file present petition is to further prolong the suit. In view thereof and for the reasons set out herein above, the petition is liable to be dismissed and stands dismissed accordingly with costs of Rs. 35,000/- to be paid by the petitioners to the respondents. The costs deposited in this Court shall be forthwith transferred to the trial Court.

9. Writ petition is disposed of accordingly.

(Anil L. Pansare, J.)