



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

WRIT PETITION NO.6805/2024

Narsingalu Narasayya Nagotu
Age -66 Years, occ- Agriculturist
Both R/o Kukkudsath, Tah Korpana,
Dist- Chandrapur.

... PETITIONER

...VERSUS...

1. Nirmalabai Maruti Sidam
Age-67 Years, occ- Agriculturist
R/o Kalamna, Taluka- Rajura, Dist-
Chandrapur.
2. Madhukar Pundlik Pendor
Age-60 Years, occ- Broker
R/o Nimbala, Taluka- Rajura, Dist-
Chandrapur.
3. Maruti Murlidhar Sundri
Age-67, occ- Agriculturist
R/o Nimbala, Taluka- Rajura,
Dist-Chandrapur.
4. Sachin Madhukar Pendor
Age-27 Years, occ- Nil
R/o Nimbala, Taluka- Rajura,
Dist-Chandrapur.

...RESPONDENTS

Shri Rohan Kothari, Advocate h/f Shri R.R. Vyas, Advocate for petitioner

CORAM : **SMT. M. S. JAWALKAR, J.**
DATE : **21/03/2025**

ORAL JUDGMENT

Rule. Rule made returnable forthwith.

2. Heard learned Counsel for the petitioner.
3. Present petition is filed being aggrieved by the order dated 07/10/2024, passed below Exhibit 103 in Regular Civil Suit No. 42/2022, rejecting the application of petitioner to file additional list of witnesses under Order 16, Rule 1 of the Code of Civil Procedure.
4. A suit bearing Regular Civil Suit No. 42/2022 was preferred by the petitioner for grant of permanent injunction. It was the case of petitioner that the suit property bearing agricultural Survey No. 147 and 148-1 was the ancestral property and was in possession of the petitioner. According to the plaintiff, the respondent No.1 was residing in the area where the suit property was situated at Mauja - Kalamana. It was the case of the petitioner in the plaint that father of the petitioner was cultivating Survey No.

148-1, since the year 1960, who due to ill-health died in the year 1970. Thereafter, since the year 1970, the petitioner was cultivating, field Survey No. 148-1 ad-measuring 3H 207R.

5. It is contention of the petitioner that in 7/12 extract of Survey No. 148-1, name of Vijay Saraf and other persons was recorded, but none of them had either visited the agricultural field or caused disturbance to the peaceful possession of the petitioner's agricultural land bearing Survey No. 148-1. Since the entire revenue record was computerized, the petitioner in the year 2020, preferred an application to the Tahasildar, Rajura, requesting to take necessary entry in 7/12 extract, more particularly column 7B. Notices were issued to Mr. Saraf and others and respondent No.1 has also filed her objection in the said proceedings. Since quarrel arose on multiple occasions with the respondents, complaints were made to Rajura Police Station.

6. The petitioner has filed an application for permission to file document, which came to be rejected on the ground that it was not the stage to file the documents. Petitioner therefore preferred an application for permission to file additional list of

witness below Exhibit 103. The said application was opposed by the respondents by filing their say. Learned Civil Judge Junior Division, Rajura, rejected the said application. The aforesaid order is the subject matter of challenge in the present writ petition.

7. Heard. In spite of service, respondent failed to appear in the matter. Heard learned Counsel for the petitioner. Perused the orders passed by the learned Civil Judge Junior Division, Rajura.

8. Petitioner has filed Regular Civil Suit No. 42/2022, before Civil Judge Junior Division, Rajura, for permanent injunction. The matter was for the evidence of the plaintiff. He has examined four witnesses as per the list Exhibit 44. As PW. 4, turned hostile another witness i.e PW. 5 was served with the summons, however, he deliberately avoided to attend the Court. Therefore, petitioner dropped that witness and applied for permission to file additional list of witnesses to prove the contents of Exhibit 17. The applicant mentioned in application how the witnesses are material. The defendant filed there say. However, the application came to be rejected on the ground that already list of witnesses is filed at Exhibit 44. Second ground mentioned is that the same application

already rejected by the Court vide Exhibit 94 on 06/09/2024 and it is not the stage to file list of witnesses. This order below Exhibit 103 dated 07/10/2024, came to be passed. There was application for permission to file document came to be rejected only on the ground that this is not a stage to file a document. The petitioner's application for issuing summons to the Inspector of Police Station, Rajura, with record is also came to be rejected on the ground that name of the witness is not mentioned in the witness list. Similarly, the application for permission to file additional list of witnesses under Order 16, Rule 1, is also rejected for the aforesaid reason below Exhibit 94. While rejecting this application, the reason given by the learned Civil Judge Junior Division is that the plaintiff already filed witness list. As such, as one of the ground rejecting the application appears to be application already rejected by the Court vide order below Exhibit 94, on 06/09/2024. If order below Exhibit 94 is perused, it is rejected on the ground that same application rejected vide Exhibit 92 on 04/09/2024, particularly on previous date. If order below Exhibit 92, is perused, it was rejected on the ground that the name of the witness is not mentioned into the witness list and hence, the application is not tenable. The learned

Civil Judge Junior Division has not considered the provision of the Code of Civil Procedure and rejected the application that this is not the stage to file list of witnesses. On perusal of Order 16, Rule 1 of the Code of Civil Procedure which reads as under :

ORDER XVI – SUMMONING AND ATTENDANCE OF WITNESSES

“1. List of witnesses and summons to witnesses.-(1) On or before such date as the Court may appoint, and not later than fifteen days after the date on which the issues are settled, the parties shall present in Court a list of witnesses whom they propose to call either to give evidence or to produce documents and obtain summonses to such persons for their attendance in Court.

(2) A party desirous of obtaining any summons for the attendance of any person shall file in Court an application stating therein the purpose for which the witness is proposed to be summoned,

(3) The Court may, for reasons to be recorded, permit a party to call, whether by summoning through Court or otherwise, any witness, other than those whose names appear in the list referred to in sub-rule (1), if such party shows sufficient cause, for the omission to mention the name of such witness in the said list.

(4) Subject to the provisions of sub-rule (2), summonses referred to in this rule may be obtained by the parties on an application to the Court or to such officer as may be appointed by the [Court in this behalf within five days of presenting the list of witnesses under sub-rule (1)].”

9. In view of Order 16, Rule 1(3), It is clear that the Court is empowered for reasons to be recorded, to permit a party to

call, whether by summoning through Court or otherwise, any witness, other than those whose names appeared in the list referred to in sub-rule (1), if such party shows sufficient cause for the omission to mention the name of such witness in the said list. The learned Civil Judge Junior Division by cryptic order rejected the application without looking into the reasons for calling the witnesses other than the witnesses in the list passed the order of rejection without recording any reason. The only reason given is that those names of witnesses are not there in the witness list and it is not the stage to file witness list. However, it appears that he has failed to give reason while rejecting the application as per Order 16, Rule 1 (3) of the Code of Civil Procedure.

10. Learned Counsel relied on *Dinesh Singh Bhim Singh Vs. Vinod Shobhraj Gajaria and another, in Writ Petition No. 11185/2022*, wherein, it is held as under :

“9. True it is that the Application filed by the Respondents/Plaintiffs on 26 August 2022 does not disclose any cause as to why the names of the said two witnesses were not included in the list of witnesses which was supposed to be filed under the provisions of Order XVI, Rule 2(1) of the CPC. The only issue is therefore whether the trial Court could have rejected that application for the of failure reason on the part of

Respondents/Plaintiffs to show any cause as mandated under the provisions of sub-rule 3 of Rule 1 of Order XVI of the CPC. The trial Court has proceeded to allow the Application holding that the rules or procedures are handmaid of justice and not mistress of justice. It is further held that no man should suffer a wrong by technical procedure of irregularities. On this ground, omission on the part of Respondents/Plaintiffs to file list of witnesses or to show sufficient cause is sought to be pardoned by the trial Court.”

11. This Court further observed in paragraph No. 12 of ***Dinesh Singh Bhim Singh Vs Vinod Shobhraj Gajarai and Another, Writ Petition No. 11185/2022*** as under :

*“12. If the Respondents/Plaintiffs in present case is denied an opportunity of examining the two additional witnesses for technical lapse of non inclusion of their names in the list of witnesses or for non-showing of sufficient cause in the application, the same would result in miscarriage of justice. In the event of Respondents/Plaintiffs being successful in proving that the transaction in question is that of a sale by examining the said two additional witnesses, the same would have a material bearing on the result of litigation. In such circumstances, Court would not deny them the opportunity by showing technical rules of procedure, drafted for advancing the cause of justice. Following the principles enunciated by the Apex Court in **Kailash Vs. Nanhku and other, (2005) 4 SCC 480**. I am of the view that even if Respondents/Plaintiffs have failed to show/plead any cause for omission of the names of said two witnesses in the list of witnesses which ought to have been filed under the provisions of sub-rule 1 of Rule 1 of Order XVI of the CPC, that alone cannot be a reason for rejecting Respondents/Plaintiffs request for examination of said two witnesses. This is particularly true when this*

Court has already arrived at a finding that the examination of the said two witnesses appears to be necessary for the purpose of determining the real question of controversy between the parties.”

12. Thus, though learned Civil Judge Junior Division is having power to allow the application to file additional list of witnesses, he has not applied his mind to the said provision and rejected the application only on the ground that the names of the witnesses were not there in the list of witnesses which is patently erroneous and cryptic order. As such, order passed by learned Civil Judge Junior Division, Rajura, is liable to be quashed and set aside. Accordingly, I proceed to pass the following order :

ORDER

- (i) The Writ Petition is allowed.
- (ii) Order passed by learned Civil Judge Junior Division, Rajura, below application Exhibit 103, dated 07/10/2024, in Regular Civil Suit No. 42/2022, is hereby quashed and set a side.
- (iii) Learned Civil Judge Junior Division, Rajura, to decide Exhibit 103 afresh keeping in view the observations made in the judgment.

(SMT. M.S. JAWALKAR, J.)

Jayashree..