



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

WRIT PETITION NO. 4086 OF 2025

1. Sarika Rajendra Kokate, Aged 42 years, Occ: Household, C/o Rajendra Kokate, R/o Dhanora (Kokate), Taluka and District Amravati.
2. Chandabai Shyamsundarji Ubhad, Aged 65 years, Occ: Household, C/o Rajendra Kokate, R/o Dhanora (Kokate), Taluka and District Amravati.

PETITIONERS

VERSUS

1. Saurabh Arunrao Ubhad, Aged 28 years, Occ: Agriculturist, R/o Ashok Nagar, Tq.Dhamangaon Railway, District Amravati.
2. Rupali Pankaj Ramde, Aged 38 years, Occ:Household, R/o Plot no.54, Khemle Layout, Near Gajananprasad High School, Sarvashri Nagar, Dighori, Nagpur, Taluka and District Nagpur.
3. Dipali Pankaj Thakre, Aged 36 years, Occ: Household, R/o Sakhare Layout, Near Government ITI College, Bhandara, Taluka and District Bhandara.
4. Prajakta Saurabh Wagh, Aged 30 years, Occ: Household, C/o Saurabh Chandrashekhar Wagh, R/o Rohana, Tq. Arvi, Dist. Wardha
5. Sanket Arunrao Ubhad, Aged 28 years, Occ:Agriculturist, R/o Ashok Nagar, Tq. Dhamangaon Railway, District Amravati.

RESPONDENTS

Shri S.D. Chopde, counsel for the petitioner.
Shri Shri K.P Mahalle, counsel for the respondent nos.1, 3 and 4.
Shri R.S. Kalangiware, counsel for the respondent no.5.

CORAM : PRAFULLA S. KHUBALKAR, J.
DATE : MARCH 05, 2026

ORAL JUDGMENT

RULE. Rule made returnable forthwith. Heard finally with consent of the learned counsel for the parties.

2. The petitioners have raised challenge to an order passed by the Appellate Court allowing an application under Order I Rule 10 of the Code of Civil Procedure, 1908 (for short, 'the Code') directing the respondent no.5 to be joined as a party to the appeal as well as defendant in the civil suit.

3. The petitioners are the original plaintiffs who have filed suit for declaration, partition and separate possession with respect to several properties including Field Survey no.57 admeasuring 34 Acre 29 Gunthas situated at Mouza Ashok Nagar, Taluka Dhamangaon Railway, District Amravati. The suit came to be decreed by the judgment and decree dated 25.11.2020 and the original defendants filed Regular Civil Appeal no.117 of 2020 which is pending adjudication. During pendency of the appeal, an application came to be filed by the intervenor/respondent no.5 herein seeking his addition as defendant to the suit and also as the respondent in the appeal claiming himself to be a necessary party. Although the application was resisted by the respondents, the Appellate Court allowed the said application by order dated 05.03.2025, which is subjected to challenge by way of instant petition.

4. Shri S.D. Chopde, learned counsel for the petitioners vehemently submitted that the intervenor/respondent no.5 herein Sanket Arunrao Ubhad is neither a necessary party to the suit nor to the appeal and could not have claimed his impleadment. He submitted that the suit came to be decided without the intervenor being a party and as such, the application deserved to be rejected. He also submitted that the father of the intervenor, i.e. Arun Bhanudas Ubhad was party to the suit and has

contested the suit on merits and therefore the intervenor claiming himself to be the second son of Arun Ubhad need not be joined as party defendant. To highlight the legal position with respect to Order I Rule 10 of the Code, he placed reliance on the judgment of the Hon'ble Supreme Court in *Amit Kumar Shaw & Another Versus Farida Khatoon & Another* [(2005) 11 SCC 403] and *Mumbai International Airport Private Limited Versus Regency Convention Centre and Hotels Private Limited & Others* [(2010) 7 SCC 417] and submitted that in absence of an enforceable right with the intervenor he cannot seek any impleadment.

5. Shri K.P. Mahalle, learned counsel for the respondent nos.1, 3 and 4 and Shri R.S. Kalangiwale, learned counsel for the respondent no.5 vehemently opposed the petition. They submitted that the respondent no.5 being another son of Arun Ubhad was a necessary party to the suit and also the appeal since the suit property consists of a property which is owned by the respondent no.5. They submitted that in view of the registered partition-deed dated 04.04.2006, the respondent no.5 became sole and absolute owner of the property bearing Survey no.57, which is the subject matter of appeal. As such, the respondent no.5 being a necessary party is entitled to participate in the proceedings. In support of their contentions, learned counsel for the respondents relied on the judgment of the Principal Seat of this Court in *Sanjay Kachardas Mutha Versus Rajeev Kachardas Mutha & Others* [2025 SCC OnLine Bom 1144] and the judgment of the Coordinate Bench of this Court in *Rama @ Ramdas Bapu Khakal & Another Versus Narayan Govinda Khakal & Others* [(2018) 1 Mah.LJ 65].

6. While considering the rival contentions, it has to be seen that the respondent no.5 had filed the application for intervention claiming himself to be the necessary party to the suit. Pertinent to note, his claim is based on his exclusive ownership on the basis of registered partition-deed dated 04.04.2006. It has to be noted that Survey no.57, which is subject matter of the suit is exclusively owned by the respondent no.5. Further, although the father of respondent no.5, Arun Ubhad, was party to the suit, the respondent no.5 alongwith respondent no.1-Saurabh, who is his real elder brother, are also entitled to be joined as necessary parties to the suit. It has to be noted that the respondent no.5 needs to be granted an opportunity to contest the proceedings of appeal so that the controversy about partition and separation possession is decided completely and finally. In the wake of the partition-deed dated 04.04.2006 in favour of the respondent no.5 and the revenue records being in his name, the decree of partition, if any, will adversely affect his interest. In view of this, I am of the firm opinion that the presence of the respondent no.5 is necessary for complete and effective adjudication of the controversy involved in the appeal.

7. A perusal of the impugned order reveals that due consideration is given to all the factual and legal aspects. The Appellate Court has passed a well reasoned order by considering in detail the entire controversy and having found that the presence of the respondent no.5 is necessary for complete and effective adjudication of the controversy, has exercised discretion positively while allowing the application.

8. On giving anxious consideration to the controversy involved in the petition, I find that the view taken by the Appellate Court is reasonable and plausible based on the material available before it. I do not find any need to interfere with the impugned order. The writ petition is dismissed with no order as to costs. Rule stands discharged.

(PRAFULLA S. KHUBALKAR, J.)

APTE