



**ORDER PASSED BELOW EXH.38 IN R.C.S. No.156/2015**

(CNR No. MHWS02-000433-2015)

1. Applicants i.e. Bhikarao Ghuge & others 44 have filed this application under Order 1 Rule 10 (2) of the Code of Civil Procedure, 1908, praying that they be impleaded in the suit as plaintiffs or defendants.

2. **Contents of this application, in nutshell, are as follows :-**

Plaintiffs have filed the present suit for declaration, mandatory injunction & perpetual injunction in respect of the road proceeding from Pimpalshenda to Wadiramrao, Taluka Malegaon, District Washim, more particularly described in the plaint (for short 'suit road'). According to applicants, they are inhabitants of village Pinmpalshenda & Wadiramrao. It is their specific contention that they use the suit road for various purposes, viz.- agriculture purpose, official purpose, etc. Except the suit road, they have no any convenient road. Despite that, plaintiffs have made encroachment upon the suit road & therefore, they (applicants) are deprived of their rights of enjoying the suit road. It is, further, contention of applicants that although plaintiffs have stated that defendant Nos.2 & 4 (i.e. Officials of the Government) have made encroachment

upon their (plaintiffs) lands while repairing the suit road, yet there is no documentary evidence to that effect. It is, thus, contention of applicants that they are necessary parties in the present suit. With this, applicants have prayed that this application be allowed.

3. Plaintiffs have filed their say to this application vide Exh.40. They have stated that lands belonging to defendant Nos.1, 2, 7, 8, 9, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 24, 25, 30, 31, 32 & 40 are not situated on the side of the suit road. However, applicant Nos.10, 29, 36, 45, 20, 21, 24, 25, 30, 31, 32, 33, 34, 37, 38, 39, 40, 41, 42, 43 & 44 do not require the suit road. However, applicant No.22 is no more, and applicant No.10 has no any land. Plaintiffs have further stated that applicants do not require the suit road for agricultural/official purpose or for any other purposes as they have alternative road. According to plaintiffs, defendant No.2 & 4 have made encroachment upon their (plaintiffs) lands without getting measured the suit road as per village map. It is further contention of plaintiffs that applicants, by joining their hands with each other, have filed the present application. With this, plaintiffs have prayed that this application be allowed.

4. Ld. Advocate Mr.Dhagde for applicants was absent though called out repeatedly. I have heard Ld. Advocate Mr.Beriya for plaintiffs at considerable length. I have also gone

through the record of the suit.

5. In support of their say, plaintiffs have filed on record of the suit in all 36 7/12 extracts, and affidavits of Shankar Lambture, Hanuman Sanap, Prakash Ghuge & Shankarrao Kaluse. Before proceeding any further, I shall at the threshold mention that an application Exh.38 was allowed by my Ld. predecessor & however, vide order passed below Exh.44, an application Exh.38 was kept for fresh hearing. It is, however, pertinent to note that although plaintiffs have stated in their say Exh.40 that defendant No.22 is dead, yet they have not filed on record of the suit the death certificate of defendant No.22.

6. It is contention of applicants that they are in need of enjoyment of the suit road. As against this, it is contention of plaintiffs that applicants are not in need of enjoyment of the suit road as they have alternative road. Here, I would like to mention that 7/12 extracts & affidavits of Shankarrao Lamture & others filed by plaintiffs are not suffice to arrive at the conclusion that applicants are not in need of enjoyment of the suit road. To determine the controversy i.e. 'whether applicants are in need of enjoyment of the suit road?', their presence before the Court is necessary. In other words, presence of applicants before the Court is necessary to enable the Court effectually & completely to adjudicate upon & settled all questions involved in the present suit. Therefore, I have no hesitation to hold that this

application deserves to be allowed. With this, I proceed to pass the following order -

**ORDER**

1. Application Exh.38 is allowed.
2. Plaintiffs shall implead in the plaint the applicants i.e. Bhikarao Ghuge & others 44 as defendant No.5 to 49 *respectively* till next date, and shall supply copies of the amended plaint as early as possible.
3. Thereafter, suit summons be issued to proposed defendant No.5 to 49.
4. No order as to costs.
5. Parties to the suit shall take note of this order.

(Dictated & pronounced in the open Court)

Washim  
Date - 21/06/2022.

**(S.S.Ubale)**  
3<sup>rd</sup> Jt. Civil Judge Sr.Div.,  
Washim.

**CERTIFICATE**

I affirm that the contents of this P.D.F. file Order are same, word to word, as per the original Order

Name of the Stenographer : P.P.Sonune Stenographer (Grade-III)  
Name of the Court : Shri.S.S. Ubale,  
3<sup>rd</sup> Jt. C.J.S.D.Washim  
Date : 21.06.2022  
Order signed by the  
presiding officer on : 21.06.2022  
Order uploaded on : 22.06.2022