

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3243 OF 2014

Balgonda Shivgonda Patil ... Petitioner
Vs.
Chief Officer, Ichalkaranji Nagar Parishad and Ors. ... Respondents

Mr. Prashant P. Kulkarni for Petitioner.

CORAM : R. G. KETKAR, J.
DATE : JUNE 08, 2015

P.C. :

Heard Mr. Kulkarni, learned Counsel for petitioner at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the order dated 18.12.2013 passed by the learned 3rd Joint Civil Judge, Junior Division, Ichalkaranji below exhibit 16 in Regular Civil Suir No.66 of 2013. By that order, the learned trial Judge allowed the application made by the third party under Order I, Rule 10(2) of the Code of Civil Procedure, 1908 (for short 'C.P.C.').

3. In support of this Petition, Mr. Kulkarni strenuously contended that the learned trial Judge committed serious error in allowing the application filed by the third party. He submitted that the third party has no locus and / or interest in the subject matter of the Suit. In fact, third party has instituted Regular Civil Suit No.22 of 2004. That Suit was dismissed by the trial Court, though appeal preferred by the third party is pending before the district Court. He also invited my attention to the findings recorded against issues No.5 to 7 by the learned trial Judge in Regular Civil Suit No.22 of 2004. He submitted that the learned trial Judge while deciding Regular Civil Suit No.22 of 2005 held that there was partition of the suit properties. For all these reasons, he submitted that the Petition requires consideration and the impugned order deserves

to be set aside.

4. It is not possible to accept the submissions advanced by Mr. Kulkarni. The learned trial Judge has considered these submissions in paragraph 6. The learned trial Judge has noted that in Regular Civil Suit No.22 of 2004, City Survey Nos. 2803 to 2806 are the suit properties. That Suit is instituted by the third party. Though the trial Court while deciding that Suit held that there was partition, the third party has preferred the Appeal in the District Court and the same is pending. Apart from that, while deciding Regular Civil Suit No.22 of 2004, the learned trial Judge also held that the construction carried out is unauthorized. In view thereof, I do not find that the learned trial Judge has committed any error in passing the impugned order. In paragraph 8, the learned trial Judge also noted that the contesting defendant namely Municipal Council did not raise any objection which prima facie shows that the contentions of the third party regarding collusion between the plaintiff and the defendant are probable.

5. In view thereof, no case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, the Petition fails and the same is dismissed. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

6. At this stage, Mr. Kulkarni prays for extension of time for carrying out amendment in the Suit. At his request, time to carry out amendment is extended by 2 weeks from today.

(R. G. KETKAR, J.)