

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1900 OF 2015

Rahul G. Shevade & ors.

.. Petitioners

vs.

Baburao G. Mohite & ors.

.. Respondents

Mr. Kishor S. Patil for the Petitioners.

Mr. V.M. Mali for the Respondent Nos.1 to 8.

Mr. Pratap Patil for Respondent No.9.

CORAM : M. S. SONAK, J.

DATE : 21 April, 2015.

P.C. :-

1] This petition is directed against the order dated 5 August 2014, made by the learned Joint Civil Judge, Junior Division, Shirala dismissing the petitioners' application at Exhibit-123 seeking their impleadment as defendants in Regular Civil Suit No.36 of 2013 instituted by respondent Nos.1 to 8.

2] The suit, pertains to the property under Survey No. 243/1. The reliefs applied for in the suit is that of permanent injunction against respondent Nos.9 and 10; declarations that certain instruments and decrees obtained by the respondent Nos.9 and 10 or their predecessors-in-title, are not binding. There is no reference to the property under Survey No. 242/2, which is claimed by the

petitioners. In these circumstances, the learned Joint Civil Judge, by the impugned order, has held that the petitioners are neither necessary nor proper parties to the suit.

3] The learned counsel for the petitioners, however, submitted that from the description of the suit property and some plans produced by the respondent Nos.9 and 10, it appears that the respondent Nos.1 to 8, i.e., the original plaintiffs, have purported to include the petitioners' property in the description of the suit property. In such circumstances, if the suit is ultimately decreed, it is possible that on basis of such decree, the respondent Nos.1 to 8 will interfere with the rights of the petitioners in respect of the property under Survey No. 242/2. Therefore, in order to avoid multiplicity of the proceedings, it is necessary that the petitioners be impleaded as the defendants in the suit.

4] The suit, by now, has reached at a fairly advanced stage. The evidence, of the respondent Nos.1 to 8, has concluded. As noted by the learned Joint Civil Judge, any reliefs, which the respondent Nos.1 to 8 may obtain in the suit, would obviously, not bind the petitioners. If the petitioners, have any independent rights, the

petitioners, are in no manner, precluded from resorting to their independent remedies. The respondent Nos.1 to 8, as the plaintiffs, are *dominus litus*. Accordingly, against their wish, there is no necessity to implead the petitioners as the defendants in the suit. This is also not a case where the learned Civil Court, in exercise of its powers under Order 1 Rule 10 of the Code of Civil Procedure, 1908 (CPC), has recorded some satisfaction that the presence of the petitioners would assist in the resolution of issues raised in the suit. On the contrary, the learned Joint Civil Judge has recorded satisfaction, to the contrary.

5] Accordingly, there is no jurisdictional error or perversity of approach in making the impugned order.

6] This petition is, therefore, dismissed. The interim order, if any, to stand vacated. There shall be no order as to costs.

(M. S. SONAK, J.)