

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9832 OF 2014

Mr. Abdul Aziz Husain Miya Patel.] ... Petitioner

Versus

Smt. Zubeda Mohammad Yusuf Patel]
Through her Power of Attorney]
Mr. Shafiq Mohammad Yusuf Patel and Anr.] ... Respondents

Mr. S. V. Gavand for Petitioner.

Mr. M. S. Bagkar i/b N. V. Bandiwadekar for Respondents.

CORAM :- M. S. SONAK, J.

DATE :- MARCH 17, 2015

P. C. :-

1. This petition is directed against Order dated 07/03/2014 made by Civil Judge, Junior Division, Panvel, permitting the impleadment of Respondent No.1 by resort to the provision contained in Order 1 Rule 10 (2) of the CPC.

2. The Petitioner-Plaintiff has applied for a declaration in respect of the suit property. Respondent No.1 claims a share in respect of the suit property. Admittedly, there have been litigations between the parties, some of which even date back to the year 1943. In these circumstances, there is no jurisdictional error in permitting the impleadment of Respondent No.1. The learned Advocate for

Petitioner is, however, right that at this stage, it was not open for the Civil Judge, Junior Division, to record a finding that the Respondent No.1 has a 7/72 share in the suit property or that she has a semblance of title in respect of the suit property. The learned Advocate for Petitioner has pointed out that the Respondent No.1, in order to assert this very right, had herself instituted a separate civil suit the plaint whereof has been rejected by the Civil Court in exercise of power conferred by Order 7 Rule 11 of the CPC. Accordingly, the observation in the impugned order with regard to any alleged right of the Respondent No.1 can, at the highest, be regarded as *prima-facie*. Such observations, at the highest, are in the context of decision as to whether leave should be granted to implead the Respondent No.1 and nothing further.

3. There is, however, no jurisdiction error in the impugned order.

4. In view of the aforesaid, and subject to the observations made, there is no reason to interfere with the impugned order. This petition is accordingly disposed of. There shall be no order as to costs.

(M. S. SONAK, J.)