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IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7496 OF 2015

Shri Laxman Mahadu Pawar and others .. Petitioners

Vs.

The District Collector, Nashik District and others .. Respondents

Mr.Milind M.Sathaye, Advocate for the Petitioners.
Mr.A.R.Metkari, AGP for Respondents No. 1 to 3.

CORAM : R. G. KETKAR, J.
DATE : 31st JULY, 2015

P.C. :

. Heard Mr.Milind M.Sathaye, learned Counsel for the petitioners and Mr. A.R.Metkari, learned AGP for respondents No 1 to 3 at length.

2. By this Petition under Article 227 of the Constitution of India, original plaintiffs have challenged the judgment and order dated 19/06/2015 passed by the learned Civil Judge, Senior Division, Malegaon, District Nashik below Exhibit 25 in Regular Civil Suit No. 47 of 2015. By that order, the learned trial Judge allowed the application filed by respondents No. 4 to 7, hereinafter referred to as third party applicants under Order 1 Rule 10 of Code of Civil Procedure, 1908 (for short 'C.P.C.') for adding them as defendants.

3. In support of this Petition, Mr.Sathaye submitted that

third party applicants instituted proceedings being Wahivat Case No. 5 of 2013 before Tahsildar, Baglan under Section 5 of the Mamlatdar's Courts Act, 1906 (for short 'Act'). He submitted that by the order dated 28/02/2014, Tahsildar partly allowed the Suit filed by third party applicants. As regards easementary rights, the Tahsildar did not accept their case. The Tahsildar also directed removal of encroachment carried out in Shiv Nala which is between Mauze Shripurwade and Brahmanpade and for that purpose carry out measurement of agricultural lands, if necessary by fixing boundaries of these agricultural lands. The Tahsildar also directed that after carrying out measurement in accordance with law, if it is found that agriculturist have made encroachment near Nala, the said encroachment to be removed.

4. Mr.Sathaye submitted that third party applicants did not challenge that order. The petitioners are affected by clause 3 of the operative part of the order. The petitioners, therefore, instituted Regular Civil Suit No. 47 of 2015 challenging the order dated 28/02/2014. Mr.Sathaye has taken me through the plaint and submitted that the third party applicants are neither necessary parties nor proper parties. No relief is claimed against them. He, therefore, submitted that the learned trial Judge committed error in allowing the application.

5. I have considered the submissions advanced by

Mr.Sathaye. I have also perused the material on record. It is not in dispute that third party applicants instituted proceedings under Section 5 of the Act against the petitioners herein. The petitioners were respondents in the proceedings. By order dated 28/02/2014, Tahsildar partly decreed the Suit. It is no doubt true that the relief by easementary right claimed by third party applicants was not granted by Tahsildar and the said order is not challenged by third party applicants. However, having regard to clause 3 of the operative part of the order, Tahsildar has directed to remove encroachment which is on both sides of Nala. The petitioners herein have challenged that very order in the trial Court. In my opinion, since the third party applicants were parties in the proceedings under Section 5 of the Act, the plaintiff on his own should have impleaded them as party defendants. Having not done so, third party applicants filed application under Order 1 Rule 10 of C.P.C. The learned trial Judge observed in paragraph 4 that the petitioners have challenged legality of the order dated 28/02/2014 passed by the Tahsildar. While considering the application under Order 1 Rule 10 of C.P.C., the Court has to consider whether it is necessary to add a party for it completely and effectually decide all the questions in Suit. For reasons stated in paragraph 9, the learned trial Judge allowed the application. The learned trial Judge held that rights of the third party would be affected and Suit cannot be decided effectually and

completely in the absence of the third party applicants. In the light of above discussion, I do not find that the learned trial Judge has committed any error in passing the impugned order. No case is made out for invoking powers under Article 227 of the Constitution of India. Hence, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)