

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 133 OF 2013

1. Sheikh Karim s/o Shaikh Chunnu,
Age : 31 years, Occu. Agri.

2. Khushiyaabee w/o Sheikh Chunnu,
Age : 60 years, Occu. Agri.

Both r/o Patode Wadgaon, **PETITIONERS**
Tq. Paithan, District Aurangabad **(Ori. Defts.1&2)**

VERSUS

1. Sharad s/o Manikrao Chobe,
Age : 63 years, Occu. Agri.
and Business, R/o Chetna Nagar,
Aurangabad

2. Dr. Shyam s/o Manikrao Chobe,
Age : 59 years, Occu. Agri.
And Business,
R/o as above

3. Neeta w/o Sharad Chobe,
Age ; 63 years, Occu. Agri.
And Business

4. Dr. Alka w/o Shyam Chobe,
Age : 57 years, Occu. Medical
Practitioner

5. The State of Maharashtra,
through Tahsildar, Paithan,
District Aurangabad

RESPONDENTS
(Nos. 1 to 4 are
Ori. Plaintiffs
and No. 5 is ori.
Defendant No. 3)

Mr. R.M. Sharma, Advocate for the Petitioner
Mr. S.H. Joshi, Advocate for respondent Nos. 1 to 4
Mr. S.W. Munde, A.G.P. for respondent No. 5/State

CORAM : SANGITRAO S. PATIL, J.

DATE : 1st September, 2016

ORAL JUDGMENT :

Heard the learned counsel for the parties.

2. The petitioners have challenged the order dated 21st March, 2013, passed by the 4th Joint Civil Judge, Senior Division, Aurangabad below application (Exh-21) in Regular Civil Suit No. 2168 of 2012, whereby it came to be rejected.

3. The learned counsel for the petitioners submits that respondent Nos. 1 to 4 instituted Regular Civil Suit No. 2168 of 2012 for injunction simplicitor in the Court of Civil Judge, Senior Division at Aurangabad. Respondent No. 5 – the Tahsildar, Paithan has no concern whatsoever with the said lis. However, in order to shift the jurisdiction of the Civil Court at Paithan to the Court of Civil Judge, Senior Division, Aurangabad, the Tahsildar came to be added as defendant No. 3 in the said Suit. The petitioners, therefore, filed application (Exh-21) before the learned Trial Judge pointing out the said fact, requested to delete

defendant No. 3 — Tahsildar from the array of the parties and return the plaint to respondent Nos. 1 to 4 for being filed before the proper Court. However, the learned Trial Judge wrongly rejected the application (Exh-21). He, therefore, submits that the impugned order may be set aside, the application (Exh-21) may be allowed, respondent Nos. 1 to 4 may be directed to delete the name of respondent No. 5 from the plaint and the plaint may be ordered to be returned to respondent Nos. 1 to 4 for being filed before the proper Court.

4. As against this, the learned counsel for respondent Nos. 1 to 4 submits that there are specific averments made in paragraph No. 8 of the plaint showing concern of respondent No. 5 — the Tahsildar with the dispute between the parties. The Tahsildar has been rightly impleaded as defendant No. 3 in the plaint. Since the Tahsildar is a Government Officer, the suit has been rightly filed in the Court of Civil Judge, Senior Division, Aurangabad. He submits that the learned Trial Judge rightly rejected the application (Exh-21) and prays that the Civil Revision Application may be dismissed.

5. Respondent Nos. 1 to 4, in paragraph 8 of the plaint, alleged that after execution of sale-deed dated 14th June, 2011 in favour of Ramnarayan Agrawal and Amitabh Agrawal, the remaining land admeasuring 0.36 Ares out of Block No. 26, was still owned and possessed by them. However, respondent No. 5 did not take entry in the revenue record to that effect. This is how respondent Nos. 1 to 4 have shown concern of respondent No. 5 – the Tahsildar, with the dispute between the parties.

6. It is the choice of the plaintiff to add as many as defendants to the suit as desired. If any party/defendant has any grievance for its impleadment to the suit on the ground that it was not either proper or necessary party, it may approach the Court and seek deletion of its name from the array of the defendants. Any third person cannot request the Court for deletion of such a party from the array of defendants.

7. In the present case, respondent No. 5 (the Tahsildar) did not file any application before the Trial Court seeking deletion of his name from the array of the

defendants on any count. If a suit is filed against any party which has no concern whatsoever with the dispute – subject matter of the suit, that party can claim heavy compensation/costs from the plaintiff. The plaintiff would carry the risk of paying compensation/costs to such a party. However, the plaintiff cannot be compelled to delete the name of any defendant in the absence of any objection raised to that effect by a party added to the suit. If that be so, the learned Trial Judge cannot be said to have committed any mistake in refusing to direct respondent Nos. 1 to 4 to delete the name of respondent No. 5 from the array of the defendants.

8. As long as respondent No. 5 is a party before the Trial Court, the suit would proceed in the Court of Senior Civil Judge at Aurangabad. There is no question of directing the plaintiff to take back the plaint for being filed before the Court of Civil Judge, Senior Division, Paithan since respondent No. 5 – Tahsildar is a party thereto. In the circumstances, I do not find any reason to interfere with the impugned order passed by the learned Trial Court below application (Exh-21).

The Civil Revision Application is devoid of any substance. It is liable to be dismissed. Hence, the order:-

9. The Civil Revision Application is dismissed. The Rule stands discharged accordingly. No costs.

[SANGITRAO S. PATIL]
JUDGE

npj/cra133-2013