

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO. 7915 OF 2016

Hausabai w/o Ranu Wadavkar and others .. Petitioners

versus

Ayub s/o Mehboob Pathan and another .. Respondents

Mr. Madhukar G. Kolse Patil, Advocate for petitioners

CORAM : SUNIL P. DESHMUKH, J.
DATE : 1st August, 2016

ORDER :

1. Heard learned counsel appearing for petitioners who purport to have been aggrieved by order passed on 02-02-2016 on their application Exhibit - 13 in special civil suit no. 33 of 2014, whereunder Civil Judge, Senior Division, Shrigonda, has turned down their request to implead them as parties to the suit.
2. Learned counsel for the petitioners contends that as a matter of fact, the petitioners are protected tenants over the

land and are in possession of the same. Suit has been filed by the plaintiff for specific performance of agreement against the defendant and in the event such a decree being passed, is perceived by petitioners, may pose threat to their rights and possession over the suit land. In the circumstances, he submits, his application ought to have been allowed.

3. Perusal of impugned order shows that learned judge has taken into account relevant aspects particularly that there no right or any relief being claimed in the suit against present petitioners nor does it appear that in a suit for specific performance, for a decree to be passed, presence of the petitioners is necessary.

4. Learned judge has taken into account a ruling of the supreme court in the case of *Kasturi v. Iyyaamperumal and others*, reported in *AIR 2005 SC 2813* whereunder, learned trial judge has referred to that it is observed having regard to Order I, rule 10 of the Code of Civil Procedure, 1908 and section 19 of Specific Relief Act, 1963, a third party claiming independent right and possession over suit property is neither necessary nor proper party, and additionally, two tests are required to be satisfied that, there must be right to relief against such

party in respect of contest in the matter and no effective decree can be passed in the absence of third party.

5. Having regard to purport and the object underlying Order I, rule 10 of the Code of Civil Procedure, the trial court in its discretion has considered that presence of petitioners may not be necessary for decision of the suit as has been instituted by the plaintiff and petitioners do not appear to satisfy aforesaid requirements for getting impleaded.

6. In view of aforesaid, the exercise of discretion by learned judge does not appear to be illegal or for that matter without following judicial principles.

7. As such, I am disinclined to interfere with the order impugned.

8. Writ petition thus stands rejected.

SUNIL P. DESHMUKH,
JUDGE

pnd