

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

WRIT PETITION NO.1141 OF 2015

Suryakant s/o Pandharinath Tawale
Age 49 years, Occ. Agri. & Advocate,
R/o Tawalwadi, Tq. Ashti, Dist. Beed,
at present R/o Ashti, District Beed. ... PETITIONER

VERSUS

1. Vijaykumar s/o Pandharinath Tawale
Age 56 years, Occ. Agri.
2. Ravikant @ Keshav s/o Somnath Tawale,
Age 46 years, Occ. Agri.
3. Shivraj s/o Somnath Tawale,
Age 30 years, Occ. Agri.
4. Shivprakash s/o Somnath Tawale,
Age 26 years, Occ. Agri.
5. Sau. Hirabai w/o Somnath Tawale,
Age 54 years, Occ. Agri.
6. Somnath s/o Pandharinath Tawale
Age 63 years, Occ. Agri. ... RESPONDENTS

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Shri V.D. Salunke, Advocate for petitioner
Shri S.S. Bora, Advocate for respondents
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CORAM: S. B. SHUKRE, J.

DATED: 1st February, 2017.

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by consent of learned counsel for the parties.

2. By this writ petition, the legality and correctness of the order dated 16/1/2015, passed by Jt. Civil Judge, Junior Division, Ashti in Regular Civil Suit No.720/2011, thereby allowing the application vide Exh.16/D filed by the third party under Order 1 Rule 10(2) of the Civil Procedure Code. It was the contention of the third party that the suit property was purchased by him in the name of the petitioner, who is the original plaintiff and that, way back in the year 1999, that his possession was obstructed and that he was in the peaceful and continuous possession of the suit property. For these reasons, he prayed that he be joined as necessary party for finally setting at rest the controversy involved in the suit. Accepting this contention of the third party, the learned Civil Judge allowed his application and directed him to be joined as party defendant.

3. In allowing application of the third party for joining him as a party defendant, the learned Civil Judge reasoned that the defendants as well as third party were contending in unison that the property was belonging to the joint family and the third party was Karta of the Hindu joint family and, therefore, if any decree was to be passed against the defendants, some of whom were the members of Hindu joint family, such decree would also bind the third party in his capacity as legal representative or

agent of some of the defendants.

4. By reasoning so, it is apparent that, the learned Civil Judge has ignored the well settled principles of law. In fact, the learned Civil Judge has reproduced the principles of law in the earlier parts of the impugned order, but somehow or the other, failed to implement them while making necessary conclusions in this case. The suit has been filed only for injunction against the defendants. It is a suit for injunction simplicitor and nothing more. No relief of any nature whatsoever has been claimed against the third party. If the third party is contending that he had purchased the suit property in the name of plaintiff, the doors of the Civil Court are open to him to agitate this issue by instituting appropriate proceedings separately before the Civil Court. But, in a suit filed for injunction simplicitor, in which the plaintiff is the master of the suit, such a third party cannot be allowed to barge in and bulldoze his way into the suit proceedings so as to assert his right based on a different cause of action. If the possession in respect of the suit property claimed by the petitioner is not found to be with the petitioner, question of decreeing of the suit will not arise. If it is found to be with the petitioner, the decree that would be passed, in any case, would bind only the defendants, and if it is found at that time that such decree cannot be passed in the absence of third party being a

necessary party, the Civil Court can even refuse to pass a decree accordingly. But, to say that there is some contingency likely to arise because of certain contentions raised by the third party, such third party should be allowed to interfere in the suit filed by the petitioner, would be like going against the well settled principles of law, which tell us that, in civil suit the plaintiff always enjoys the position of person called domino litis.

5. Viewed in this way, I find that, the impugned order is patently illegal and passed against well settled principles of law. It deserves to be quashed and set aside. The Writ Petition is allowed with costs. The impugned order is quashed and set aside. Rule is made absolute in the above terms.

(S. B. SHUKRE)
JUDGE

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