

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1549 OF 2014

Padmakar s/o Bhimrao Mokase

Age: 46 years, Occ: Agri.,

R/o: Waghala, Tq. Pathri,

Dist. Parbhani

..Petitioner

Versus

1. Nandu s/o Sakharam Nagargoje
Age: 41 years, Occ: Service,

2. Babu s/o Munjaji Sonwane,
Age: 66 years, Occ: Agri.,

Both R/o : Waghala, Tq. Pathri,
Dist. Parbhani

.. Respondents

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Mr. Mayur Salunke, Advocate h/f Mr. V. D. Salunke, Advocate for
petitioner

Mr. Pratap P. Mandlik, Advocate for respondents

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CORAM : SUNIL P. DESHMUKH, J.

DATE : 28-11-2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned
counsel for the parties finally, by consent.

2. The petition is preferred against order dated 16-01-2014
upon application at exhibit-10 in regular civil suit no. 32 of 2013.
Petitioner is plaintiff in the same. During pendency of the petition,
while there had been reference in the written statement by

defendant to that about 1 Are land had been purchased by Babu Sawane from plaintiff in the year 1993 and since then he had been in possession of said piece of land. Whereas suit *inter alia* also claims injunction for removal of tin shed situated on 1 Are land area from defendant of which original defendant claims to be not in possession. As such, for proper adjudication in the suit, an application had been moved at exhibit-10 by original defendant adding said Babu as defendant to the suit. The plaintiff had opposed the application. Court has passed the order allowing application on 16-01-2014.

3. Learned counsel Mr. Salunke appearing for the petitioner submits that plaintiff is *dominus litus* and, as such, he may suffer the consequences of non impleading the party and, in the circumstances, with reference to the contentions on behalf of the defendant, it would not be proper to add Babu as party to the suit.

4. Mr. Mandlik, learned counsel appearing for the original defendant as well as added party contends that application exhibit-10 had been moved with material support in the form of document dated 27-04-1993 which has been executed by plaintiff in favour of Babu which represents that about 1 Are land has been sold by plaintiff to said Babu. He further refers to that said Babu and defendant have also filed regular civil suit no. 81 of 2013 for specific performance against plaintiff which is pending.

5. Perusal of the impugned order shows that the court with reference to the material on record had considered that, prima facie Babu appears to have some interest over 1 Are land which gets credibility since litigation is pending in the form of regular civil suit no. 81 of 2013 and, as such, it had been considered necessary that Babu Sawane be added as party to the pending suit.

6. As the trial court has considered in its discretion presence of Babu before it in the suit filed by plaintiff, as necessary for effectual adjudication of *lis*, the discretion so exercised can not be flawed on any reasonable basis. As such, it does not appear to be a case to indulge into the request made under the writ petition. Writ petition is thus not entertained and is dismissed. Rule stands discharged.

7. At this juncture, learned counsel for petitioner seeks further indulgence into the request that trial court to go ahead expeditiously with the suit.

8. As such, trial court may proceed with the suit as expeditiously as possible.

[SUNIL P. DESHMUKH]
JUDGE

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