

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4279 OF 2017

S.Govindsingh Dharamsingh Kunjwale,
Age-62 years, Occu-Business,
R/o Hingoli Gate, Nanded,
District : Nanded

-- PETITIONER

VERSUS

1. S.Gulabsingh Dharamsingh Kunjwale
died, through LR's,

[1-a] Pawanjeetkaur w/o Gulabsingh Kunjwale
@ Girniwale,
Age-52 years, Occu-Household,
R/o Near Ramkrishna Talkies,
Nanded, Taluka and Dist.Nanded,

[1-b] Dharmendrasingh s/o Gulabsingh Kunjawale,
Age-62 years, Occu-Business,

[1-c] Amitsingh s/o Gulabsingh Kunjawale,
Age-26 years, Occu-Business,
1-b and 1-c R/o Badpura,
Gurudwara Gate No.4,
Nanded, Taluka and Dist.Nanded,

[1-d] Jaswantkaur w/o Jaspalsingh Bungai,
Age-34 years, Occu-Household,
R/o Kasarkheda, Tal.Ardhapur
and Dist.Nanded,

[1-e] Gulshankaur w/o Jaspalsingh Pujari,
Age-29 years, Occu-Household,
R/o Near Ramkrishna Talkies, Nanded,
Taluka and Dist. Nanded

-- RESPONDENTS

Mr.S.N.Janakwade, Advocate for the petitioner.
Mr.Amol Joshi h/f Mr.R.S.Deshmukh, Advocate for respondent Nos. 1
A to 1E.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 04/09/2017

ORAL JUDGMENT :

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

2. The petitioner / original plaintiff is aggrieved by the two orders dated 17/12/2016 delivered by the Trial Court on the applications Exh Nos.85 and 87 in RCS No.177/2010.

3. I have heard the strenuous submissions of the learned Advocates for the petitioner and the respondents / original defendants.

4. In so far as Exh.85 is concerned, the plaintiff desires that the Collector, Nanded, D.S.L.R. Nanded, and the Commissioner of the Municipal Corporation, be arrayed as defendants. The justification for seeking addition of these authorities is because they have issued some notices and mutation entries have been carried out.

5. Merely because a revenue or statutory authority performs its

duty by way of its day to day administration, would not mean that these authorities need to be arrayed as defendants, much less when their non inclusion as defendants would not obstruct the Trial Court from deciding the suit. It is settled law that when it comes to addition of parties, the Trial Court must be convinced that the non inclusion of any party as a plaintiff / defendant would preclude the Trial Court from adjudicating upon the suit. Hence the impugned order below Exh.85 can neither be termed as being perverse nor erroneous.

6. By application Exh.87, the plaintiff desires that the mutation entry needs to be challenged and hence an amendment is sought for considering the objections to the mutation entry and to subject the mutation entry to the decision in the suit. It is further prayed in the proposed paragraph No.10-A that wrong statements have been made by the statutory authorities and hence by the proposed paragraphs, a restraining order is sought as against incorporating the names of defendant Nos. 1/1 upto 1/3. Paragraph Nos.10-A to 10-C is sought to be included in the plaint. There is no prayer for addition of any consequential or allied prayer clause.

7. This Court, in the matter of Shrikant R.Sankanwar and others

Vs. Krishna Balu Naukudkar [2003(3) Bom.C.R.45] has concluded that revenue entries as like the mutation entries are only meant for taxation purposes. Merely because a mutation entry is carried out, would not change the title of any person over a property and such mutation entries do not amount to an adjudication of the right or title over the property.

8. By the proposed 3 paragraphs, the plaintiff desires that the probable mutation entries by which the names of the defendants would be mutated, needs to be restrained. It is now informed that the said mutation entries have already been effected.

9. Considering the law laid down by this Court in Shrikant Sankanwar (supra), I do not find that the claim of the petitioner/ plaintiff would stand jeopardized or affected merely because mutation entries are carried out. It is not the case of the plaintiff that he would be dispossessed by virtue of the mutation entries. So also, the plaintiff cannot be dispossessed by any authority or any of the defendants until the due procedure laid down in law is followed.

10. The suit is at a final stage. Needless to state, the decision in the suit will bind the revenue authorities, as well as any mutation

entry that may have been effected during the pendency of the said suit, would be subject to such decision. The Trial Court would consider the contentions of the litigating sides as per their pleadings and the oral and documentary evidence while deciding the said suit. In this backdrop, the impugned order on Exh.87 cannot be termed as being perverse or erroneous.

11. The petition, being devoid of merit, is therefore, dismissed.

(Ravindra V.Ghuge, J.)