

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7527 OF 2017
WITH
WRIT PETITION NO. 9551 OF 2013

SAYED RAHEMATULLA SHAH TURAB ALI SHAH
VERSUS
THE MAHARASHTRA AGRO FOOD CORPORATION & ORS

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Advocate for Petitioner : Shri Warad Sunil V.
AGP for Respondent 3 : Shri Bhagat N.T.
Advocate for Respondent 7 : Shri Kasliwal A.H.
Advocate for Respondents 15 to 7, 19,20,23 & 24 :
Shri Mundhe S.V.
Advocate for Respondent 26 : Shri Pathan H.I.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: October 11, 2017

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PER COURT :-

1. In the first petition, the petitioner is aggrieved by two orders, dated 10.11.2008, which is an inter-locutory order passed by the trial Court refusing injunction and the order dated 25.11.2016 passed by the appellate court, dismissing Misc. Civil Appeal No.161 of 2008.

2. Learned counsel for the petitioner has strenuously canvassed for seeking relief under Order XXXIX Rules 1 and 2 of the CPC. He submits that he not mind the suit of 2008

being expedited, but prays for injunction against the respondents. His grievance is that third party interest or rights would be created by the original defendants.

3. I find that RCS No.308 of 2008 is ripe for final hearing. The petitioner is without any injunction from 10.11.2008 for the last nine years. Considering the merits of the matter, in a petition challenging an inter locutory order which is nine years' old, does not appear to be practicable. The first petition, therefore, deserves to be disposed off.

4. It is pointed out that this Court (Coram : S.S.Shinde, J.) by order dated on 27.11.2013 has stayed RCS No.308 of 2008 in Writ Petition No.955 of 2013. The same order is still in force.

5. I have considered the extensive submissions of the learned Advocates in Writ Petition No.9551 of 2013. My attention has been drawn to the eight grounds formulated by the petitioner in the memo of the petition.

6. Shri Warad submits for the same petitioner that a bogus

General Power of Attorney (GPA) was prepared by some of the defendants. The signature of respondent No.29 on the said GPA is also forged.

7. Issue is as regards, whether the addition of parties could be allowed under Order I Rule 10 of the CPC. Subject matter of the suit is land admeasuring 9 acres and 3 gunthas in S.No.101 situated at Nanded. The third party applicants, who had moved application Exhibit 142 for seeking addition to the proceedings as defendants, claimed that the said property was owned and possessed by their ancestors. The State of Hyderabad had acquired the said property. The ancestors of the third party had moved the State of Hyderabad for restoration of the land. Order to deposit amount of compensation in the State Treasury was passed and after compliance, the order of restoration of the land was passed.

8. It was further contended that the original plaintiff was the real brother of the applicants seeking addition. The ground of equal shares in the ancestral property has been put forth. In the interregnum, the property was acquired by the State and subsequently auctioned. Auction purchasers are before the

trial Court.

9. Considering the above, it needs to be assessed as to whether addition of the parties would serve any purpose. This issue can be looked at from the angle of irreparable harm, serious prejudice and manifest inconvenience being caused, by refusing leave to be added as defendants. If eventually, it is found that the brothers / sister of the plaintiff would be entitled to the share in the ancestral property, the trial Court would be handicapped in deciding the suit, if these parties are not permitted to be arrayed. If addition of these parties is allowed and eventually it is noticed that the addition was fruitless and purposeless, at best the added parties would not be entitled to any relief and no loss would be caused.

10. Considering the above, I do not find that the impugned order dated 13.3.2013 could be termed as being perverse or erroneous. It appears to be a pragmatic order and which would ensure that the ends of justice are met. The second petition is, therefore, dismissed. Consequentially, the first petition stands disposed off by directing the trial Court to decide RCS No.308 of 2008 expeditiously and in any case

on/or before the 31.10.2018. Needless to state, the trial Court would be at liberty to refuse adjournments if are sought on unreasonable and trivial grounds.

11. All contentions of the litigating sides are kept open.

(RAVINDRA V. GHUGE, J.)

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