

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

909 WRIT PETITION NO. 8365 OF 2017

SHAIKH RAMZAN @ RAMZANI GANI QURESHI

VERSUS

ABHAY BANSILAL MUTHA AND OTHERS

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Advocate for Petitioner : Mr.S.D.Tawashikar h/f Shaikh Mazhar A.
Jahagirdar

Advocate for respondents : Mr.V.S.Bedre.

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CORAM : V.K.JADHAV, J.

DATED : 3rd NOVEMBER, 2017.

PER COURT :-

1. Heard learned counsel for the parties.
2. Being aggrieved by the order passed in Regular Civil Suit No.128/2011 by the 3rd Jt. Civil Judge, Junior Division, Shrirampur below Exh.113 dated 02.02.2017, the original plaintiff preferred this writ petition.
3. The petitioner/original plaintiff has instituted the Regular Civil Suit No.128/2011 for perpetual injunction against the present respondents/original defendants. By way of application Exh.113, the petitioner/original plaintiff

requested the court to add the Municipal Council, Shrirampur, as party defendant to the suit. The respondents/defendants have strongly resisted the said application by filing say at Exh.115. The learned Civil Judge by the impugned order rejected the said application. Hence this writ petition.

4. The learned counsel for the petitioner/original plaintiff submits that the subject matter of suit is a Pan Stall situated in Ward No.5 on the part of drainage and the said portion of the land is owned by the Municipal Council, Shrirampur. The learned counsel submits that in absence of the Municipal Council, Shrirampur as party defendant to the suit, it is not possible for the Civil Court to effectually and completely adjudicate upon and settle all the questions involved in the suit. Learned counsel submits that the respondents/defendants have also filed counter-claim and raised a contention that though the petitioner/original plaintiff is seeking order of temporary injunction against them, the petitioner/original plaintiff is doing the same by falsely pleading that the said pan stall, which is subject matter of suit, is situated on the drainage and portion of the

land owned by Municipal Council, Shrirampur. It has been pleaded by counter-claim that, in fact, the said portion is owned by respondents/original defendants. The learned counsel submits that in the backdrop of the pleadings of parties, Municipal Council, Shrirampur is necessary party and even though, the petitioner/original plaintiff is not seeking relief against the Municipal Council, Shrirampur, in absence of Municipal Council, Shrirampur, the matter cannot be adjudicated upon effectually and completely. However, the learned Judge of the trial court has given unnecessary weightage to the fact that the petitioner/original plaintiff is not seeking any relief against the Municipal Council, Shrirampur.

5. The learned counsel for the respondents/original defendants submits that there is no relief sought against the Municipal Council, Shrirampur, and there was no cause of action against the Municipal Council, Shrirampur. The learned counsel submits that the said suit is pending since 2011 and after closing of the evidence, the petitioner/original plaintiff has filed the aforesaid application Exh.113. The learned counsel submits that considering the

same, the trial court has rightly rejected the regular civil suit. Hence, no interference is required.

6. In the light of the pleadings of the parties and the pleadings of the respondents/defendants by way of counter-claim, it appears that the Municipal Council, Shrirampur is necessary party and dispute between the petitioner and the respondents cannot be adjudicated upon effectually and completely in absence of Municipal Council, Shrirampur, as party defendant. Though, no relief is sought against the Municipal Council, Shrirampur, the same is not the requirement of Order 1 Rule 10 of Code of Civil Procedure, 1908. Thus, the impugned order is liable to be quashed and set aside and the application Exh.113 deserves to be allowed. Hence, the following order :-

ORDER

- (I) The writ petition is hereby allowed. In the circumstances, there is no order as to costs.
- (II) The impugned order below Exh.113 dated 02.02.2017 in Regular Civil Suit No.128/2011 is hereby quashed and set aside.

- (III) The application Exh.113 is allowed in terms of its prayer clauses.
- (IV) The writ petition is accordingly disposed of.
- (V) Parties are at liberty to file an application before the trial court for expeditious hearing of the suit.

(V.K.JADHAV, J.)

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