

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8412 OF 2016

MANISHA RAVINDRA MODI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Shri Salunke Sudarshan J.
AGP for Respondents 1 to 3 : Shri Bhagat N.T.
Advocate for Respondent 4 : Shri Maniyar Irfan D.
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CORAM : RAVINDRA V. GHUGE, J.
Dated: June 08, 2017
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PER COURT :-

1. Heard the learned Advocates for the respective sides extensively on 7.6.2017 and today as well.
2. The petitioner / plaintiff is aggrieved by the impugned order dated 27.6.2016 below Exhibit 83, by which, the petitioner has been directed to add respondent No.4 as defendant No.4 in RCS No.14 of 2010.
3. Contention of the petitioner is that the suit is filed for seeking perpetual injunction in connection with Municipal House No.8-458, which is renumbered as 8/558, situated in Survey No. 611, to the extent of 4 gunthas of land. A small house is erected on a part of the suit land and one portion is open. The petitioner has filed a map

along with the plaint. The rough sketch is described as the suit plot of the plaintiff.

4. Respondent No.4 moved an application before the trial Court praying for being added as defendant No.4 in the said suit, considering that the plot owned and possessed by respondent No.4, bearing No. 856 in Survey No. 611, is shown to be a part of the suit property in the map placed on record by the plaintiff. The said application Exhibit 83 was considered by the trial Court and by the impugned order dated 27.6.2016, the petitioner has been directed to implead her as defendant No.4.

5. Shri Salunke strenuously submits that the petitioner is not putting forth any prayers or claims against the added defendant. He further submits on instructions from the husband of the petitioner, who is present in the Court, that no claim would be made in the said suit against respondent No.4 and no equities would be claimed, even if the suit is decreed.

6. Shri Maniyar submits that ordinarily, respondent No.4 would have no desire to jump into the litigation in the suit at issue, but for the fact that her property bearing No. 8-556 has been shown to be a part of the suit property and the plaintiff claims to be in possession of the said property. The prayer in the suit is for restraining and

preventing obstruction in the peaceful possession of the plaintiff over the suit plot described through the map appended to the plaint. If respondent No.4 is precluded from presenting her case, there is a possibility that the petitioner would gain a legitimate right, title and interest over the property owned and possessed by respondent No.4.

7. Considering the submissions of the learned counsel and the record, I find that the trial Court has rightly ensured that respondent No.4 would not lose the opportunity of being heard, since prima facie, it appears that her municipal house is being shown in the suit property, over which the plaintiff desires possession. Notwithstanding the vehement submissions of Shri Salunke, that respondent No.4 is unconcerned with the suit, I find that the impugned order would promote the ends of justice and no loss or prejudice would be caused to the petitioner by the addition of respondent No.4. So also, the litigating sides could very well seek appointment of a Court Commissioner for the measurement of the properties of the petitioner as well as the respondents, so as to ensure the demarcation of the exact boundaries of their respective properties.

8. In the light of the above, I do not find that the impugned order could be termed as being perverse or erroneous. This petition being devoid of merits, is dismissed.

8. Shri Salunke voices a grievance that considering the litigation between the petitioner and defendant No.4 in another Special Civil Suit No.73 of 2010, initiated by the petitioner, respondent No.4 is likely to delay RCS No.14 of 2010. Learned counsel for respondent No.4 submits that no attempt for delaying the matter would be made at her behest. I, therefore, find it appropriate to observe that in the event, defendant No.4 has not yet filed her written statement, same shall be filed within three weeks from today and the litigating sides are precluded from seeking an adjournment on unreasonable and trivial grounds.

(RAVINDRA V. GHUGE, J.)

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