

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

WRIT PETITION NO. 11157 OF 2016

Sushil s/o Javerilal Ostawal
and another

...Petitioners

VERSUS

The Municipal Council, Sillod
and another

...Respondents

.....

Shri M.R.Sonawane, advocate for petitioners
Shri D.P.Sakhare, advocate for respondent no. 2

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CORAM : S.V.GANGAPURWALA, J.

DATED : 16th January, 2017

O R D E R :-

Mr. Sonawane, learned counsel submits that the petitioners are the original plaintiffs. They filed a suit for declaration that the notice issued by the Municipal Council under Section 53 of the Maharashtra Regional and Town Planning Act is illegal and sought injunction. According to the learned counsel, the present respondent no.2 has no concerned with the lis involved between the

petitioners and respondents.

2. Respondent no.2 filed an application for addition of party. The same is allowed. The learned counsel submits that the petitioners are dominus litis of their case. They are the masters of their suit. A third party cannot be thrust upon the plaintiffs. If respondent no.2 has any grievance, he has to file an independent proceedings and cannot agitate in the suit filed by the present plaintiffs. Mr. Sonawane, learned counsel further submits that notice does not state about the alleged encroachment.

3. I have also heard learned counsel for respondent no.2.

4. Learned counsel for the petitioners has relied upon the judgments of Single Judge of this Court in the case of **Francisco Rodrigues and anr. Vs Smt. Angelica Rebello (2010 (6) Mh.L.J.972)** and in the case of **Antonio s/o Apolinario Menezes vs**

Vithola Shamba Shetye and ors. (2015 (1) Mh.L.J.677).

5. There cannot be any dispute with the propositions put forth by the plaintiffs that they are dominus litis of their case. Under Order I Rule 10 (2) of the Civil Procedure Code, a person who is interested in the subject matter can be added as a party either on application or the Court even suo motu can direct the plaintiff to add party. It appears that objection is raised by respondent no.2 in respect of the alleged illegal construction of the plaintiffs. Pursuant thereto the notice was issued by respondent no.1 Municipal Council. The averments are that the encroachment is made by the petitioners in the land of the present respondent no.2. It cannot be said that respondent no.2 is alien to the dispute. The Trial Court has rightly exercised the discretion and allowed the appeal.

6. Writ Petition stands disposed of. No costs.

(S.V.GANGAPURWALA, J.)

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