

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10406 OF 2017
(Devashis Construction Through Ashis Shriniwas Vs. Sanjay
Madanlal Varma and others)
WITH WRIT PETITION NO.10407 OF 2017
(Devashis Construction Through Ashis Shriniwas Vs.Sanjay Onkarlal
Varma and others)
WITH WRIT PETITION NO.10408 OF 2017
Devashis Construction Through Ashis Shriniwas Vs.Sanjay Onkarlal
Varma and others)

Mr.P.S.Mehta, Advocate for the petitioner.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 23/08/2017

PER COURT :

1. In all these petitions, the petitioners and the respondents are identical in 3 different special civil suits bearing Nos. 29/2015, 30/2015 and 31/2015, respectively. The petitioners are aggrieved by the order dated 28/06/2017 by which the Trial Court has rejected their 3 applications seeking addition of defendants under Order 1 Rule 10 of the CPC.

2. I have heard the strenuous submissions of Mr.Mehta, learned Advocate appearing on behalf of the petitioner and have gone through the 10 grounds formulated, with his assistance.

3. There is no dispute that the petitioner is a defendant in the suits for possession filed by the respondents/plaintiffs. The claim of the plaintiffs and the possession is based on a title. The onus and burden would lie initially on the plaintiffs to prove their title. Issues have already been cast on 14/07/2016 by which the plaintiffs have to prove their ownership as well as that the defendant has forcefully dispossessed him.

4. The contention of the petitioner/defendant is that the original land owner be arrayed as a defendant so as to participate in the trial for proving the ownership of the suit land. The petitioner contends that its' ownership over the portion of the suit land is based on a sale deed with possession having been delivered. The revenue entries are also indicative of the respondents having taken possession of a particular portion on the basis of a sale deed.

5. Since the plaintiffs have to establish a right to the suit property based on a title and only after establishing such a title, the plaintiffs can seek recovery of possession, I do not find that the Trial Court has committed any error in concluding that the plaintiffs' vendor need not be a party to the proceeding. So also, it is for the plaintiffs to consider as to who should be arrayed as a defendant.

6. In the light of the above and merely because a different view could be taken, I do not find that the impugned orders in these petitions could be termed as being perverse or erroneous. These petitions, being devoid of merit, are therefore, dismissed.

(Ravindra V.Ghuge, J.)