

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9477 OF 2015

AVTAR KAUR LATE HARDAYALSING
VERSUS
HARVINDERSINGH BASANTSINGH BINDRA AND ANOTHER

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Advocate for Petitioner : Shri Sant Kishor C.
Advocate for Respondent 1 : Shri Patel F.K.
h/f Shri Katneshwarkar P. R.
Advocate for Respondent 2 : Shri Kshirsagar S.V.
h/f Smt. Deshpande Manjusha

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CORAM : RAVINDRA V. GHUGE, J.
Dated: September 19, 2017

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PER COURT :-

1. The petitioner is aggrieved by the order dated 4.8.2015 in RCS No. 4 of 2015 passed by the Corporation Court, by which application Exhibit 15, filed by the petitioner seeking intervention has been rejected.

2. I have heard the learned Advocates for the respective sides for quite some time.

3. It is undisputed that the 1/6th share of the original litigating sides in the suit property in Spl.C.S. No. 50 of 1971 was crystallized by a judgment decree. The appellate Court

dismissed the Appeals Nos. 39 and 42 of 2000. The Second Appeal No.644 of 2004 was withdrawn and Second Appeal No.177 of 2005 was dismissed, by this Court. The Honourable Supreme Court dismissed the Special Leave Petition Nos.21012 of 2014 and 21151 of 2014. The petitioner's share to the extent of 1/6th portion in the property is not disputed and it is not open to judicial review.

4. While hearing this petition I have specifically posed a question to the learned Advocate for respondent No.1 as regards whether he had obtained the permission of the Municipal Corporation for commencing a commercial / business activity in the area which is the original suit property in Spl.CS No.50 of 1071. The answer was that this issue will be considered by the Corporation Court in RCS No. 4 of 2015. He has, therefore, been given an evasive answer.

5. I then asked him, as to whether any development on the said property is likely to include the 1/6th share of this petitioner. The answer was that if the petitioner's 1/6th share happens to be the part of the land on which any development takes place, he would get his share of the developed property if he succeeds.

6. I, then, asked him as to whether, any such activity, which is subject matter of RCS No.4 of 2015 would be in reference to the 1/6th share of the petitioner, the answer was that the petitioner will get his share if he succeeds in the execution proceeding.

7. Considering the above, I find it quite apparent that respondent No.1 / plaintiff in RCS No.4 of 2015, has still not parted with the 1/6th share of the petitioner. A development, which according to the petitioner, has already taken place in the form of at Hotel by Name "NH-211" situated in Kranti Chowk, Aurangabad, which is likely to impinge the rights of the petitioner. It appears that the Corporation Court has failed to consider that the right of the petitioner cannot be ignored.

8. In that view of the matter, this petition is allowed.

9. The impugned order dated 4.8.2015, passed by the trial Court below Exhibit 50 is quashed and set aside. Exhibit 50 stands allowed. The original plaintiff shall forthwith implead the L.Rs. of the deceased petitioner as defendants and these added defendants will have a right to file their written statements

within the time prescribed by Order VIII Rule 1 of the CPC, after receiving the concerned case papers in RCS No.4 of 2015.

(RAVINDRA V. GHUGE, J.)

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