

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8726 OF 2015

Akshata d/o Uday Chounde,
Age: Major, Occu: Education,
R/o 'Jaganath', Rajiv Gandhi
Chowk, Latur, Through her
Power of Attorney Holder
Uday s/o Baburao Chounde,
Age 49 years, Occu: Agri.
R/o 'Jaganath', Rajiv Gandhi
Chowk, AUSA Rd, Latur Dist. Latur.

...Petitioner
(Original Plaintiff)

Versus

1. Amit s/o Govindlal Gilda
Age: 31 years, Occu: Business &
Agri. R/o Royal Enfield Bullet Show Room
Rajiv Gandhi Chowk, AUSA Rd, Latur.
2. Sow. Manjiri w/o vijaykumar Barule,
Age: 42 years, Occu: Household &
Business, R/o Rajiv Gandhi Chowk
above Laptop Bazar,
Latur.

...Respondents
(Resp. No. 1 is the
original defendant &
Resp. No. 2 is the
original applicant In
Exh-20)

...

Mr. N. B. Patil, Advocate for petitioner

...

[CORAM: SUNIL P. DESHMUKH, J.]

Date: 11th July, 2017

JUDGMENT :

1. Heard learned counsel for petitioner.
2. Learned counsel for petitioner purports to take exception to order dated 4th August, 2014 passed by joint civil judge, senior division, Latur in special civil suit no. 232 of 2013, whereunder application exhibit-20 filed by the present respondent no. 2 viz. Manjiri Barule for adding her as a defendant to the suit has been allowed.
3. Suit is in respect of property of Baburao, who died on 10th February, 2012. After the death of Baburao, plaintiff/present petitioner claimed title to the property under a will executed by deceased Baburao in his favour, whereas, respondent no. 2 who happens to be sister of plaintiff has instituted special civil suit no. 75 of 2013 before civil judge, senior division, Latur for declaration of alleged will deed dated 26th January, 2012, purported to have been executed by deceased Baburao in favour of plaintiff, her brother as null, void and forged. She has on the other hand claimed declaration of ownership and

perpetual injunction on the basis of will executed by Baburao in her favour on 13th June, 2011.

4. Having regard to aforesaid, learned judge has observed in paragraph no. 8 of the impugned order dated 4th August, 2014 thus;

“ 8. It is submission of plaintiff that the applicant has already filed civil suit bearing Spl.C.No. 75/2013. The said suit is still pending before the Second Joint Civil Judge, S.D., Latur, where she can get appropriate relief and there is no need to add applicant to the present suit. She cannot be termed as necessary party as her presence is no way necessary to decide the dispute in the present proceeding. The above submissions of plaintiff are not considerable, after perusal of pleadings of Spl.C.S.No. 75/2013. It appears that the present applicant has already challenged the will deed purported to be executed by the deceased Advocate Baburao Chounde in favour of present plaintiff of this suit, her father and brother, as a null and void. The present plaintiff filed the present suit on the basis of said will deed, which is already challenged in Spl.C.S.No. 75/2013. Considering the submissions of present applicant, it appears that

the present applicant is the necessary party to the present suit as a defendant, because, the suit property for which plaintiff claimed declaration and injunction itself under challenge in Spl.C.S.No. 75/2013, filed by the present applicant. Therefore, in order to decide the present suit with full adjudication, the present applicant is necessary party. Therefore, the submission of plaintiff is not considerable. Moreover, in order to avoid conflict orders in both the suits, the present applicant is necessary to be added as defendant for just decision of suit. Therefore, the application filed by the applicant is liable to be allowed....”

5. Learned Judge after taking stock of the situation has exercised discretion, which does not appear to be not adhering to the facts and law. The learned Judge has taken into account the principles of justice, equity and good conscious. As such, the impugned order does not call for interference with writ jurisdiction.

6. Writ petition as such, is not entertained and is rejected.

7. Learned counsel for petitioner at this stage submits that suits before the trial court be decided simultaneously

and carried forward expeditiously.

8. It is open for the petitioners to make proper application before the appropriate forum.

9. Writ petition stands disposed of.

[SUNIL P. DESHMUKH, J.]

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