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

WRIT PETITION NO.11791 OF 2014

Chandrakant s/o Venkatesh Belapurkar,
Age : 91 years, Occ. Pensioner,
R/o Kurla, Mumbai – 400 024,
At present R/o Main Road,
Sangamner, Dist. Ahmednagar ..PETITIONER

VERSUS

1. Laxminarayan s/o Murlidhar Rathi,
Age : 74 years, Occ. Consultancy,
R/o Parshwanath Galli,
A/p Tq. Sangamner,
Dist. Ahmednagar
2. Ramdayal Murlidhar Rathi,
Age : 68 years, Occ. Business,
R/o Parshwanath Galli,
A/p. Tq. Sangamner,
Dist. Ahmednagar
3. Satyanarayan Murlidhar Rathi,
Age : 64 years, Occ. Business,
R/o Parshwanath Galli,
A/p Tq. Sangamner,
Dist. Ahmednagar ..RESPONDENTS

Mr S.T. Shelke, Advocate for petitioner;
Mr A.S. Bajaj, Advocate for respondent no.2

CORAM : NITIN W. SAMBRE, J.

DATE : 7th November, 2017

ORAL ORDER:

The petitioner-landlord filed Regular Civil Suit No.473 of 2000
against plaintiff in Regular Civil Suit No.33 of 2006 for eviction, which

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suffered dismissal, against which Regular Civil Appeal No.20 of 2011 preferred by landlord is pending.

2. So far as plaintiff in Regular Civil Suit No.33 of 2006 is concerned, he has claimed perpetual injunction against his own brothers, as there appears to be some dispute *qua* the partnership business, which is carried out in the tenanted premises.

3. In response to the claim for perpetual injunction, defendants in Regular Civil Suit No.33 of 2006 raised a defence that in absence of present petitioner-landlord being party to the suit, the issue as to who is the tenant of the suit property cannot be decided.

4. Accordingly, the Trial Court has framed an issue as to who is the tenant of the suit property, amongst the parties to the said suit.

5. In the aforesaid background, application Exh.72 came to be moved by petitioner-landlord under Order I, Rule 10 of the Code of Civil Procedure, seeking his impleadment as party defendant, which is rejected by 4th Joint Civil Judge Junior Division, Sangamner, by order dated 12th November, 2014, which is impugned in the present petition.

6. Mr Shelke, learned Counsel appearing on behalf of the petitioner would urge that the petitioner is a necessary party to the suit for determining the real issue cropped up between the parties to the suit, in

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relation to rights of the tenant. According to him, the issue as to who is real tenant of the property of which the present petitioner is landlord, cannot be decided in absence of the present petitioner. He would then urge that if the issue is answered against the plaintiff, his appeal which is pending adjudication for eviction against the plaintiff in the suit, would be rendered infructuous. Thus, he would urge that the impugned order being not sustainable, deserves to be set aside and application Exh.72 deserves to be allowed.

7. Per contra, learned Counsel appearing on behalf of respondent no.1-plaintiff would urge that the suit is simpliciter for perpetual injunction against partners of the firm, viz. two real brothers. In such an eventuality, the decree passed in the suit in question would not be binding on the present petitioner, as it would be an adjudication between the parties to the suit. He would then urge that scope of the suit cannot be widened, and if necessary party is not added by the present respondent no.1-plaintiff, the Trial Court would draw appropriate inference. He, therefore, sought rejection of the petition.

8. Considered rival submissions.

9. It is required to be noted that the suit in question is instituted by the plaintiff, who happens to be real brother of defendants. The pleadings in the suit for establishing prayer for injunction are based on relation of the parties as partners of a firm.

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10. If it is assumed that the suit of the plaintiff is decreed, at the most an injunction order, if any, would operate against the parties to the suit and not against the present petitioner.

11. Assuming that by not adding the petitioner as party defendant to the suit as prayed by him the right of the petitioner would be jeopardized, still fact remains that any finding recorded in the suit in question would not be binding on the petitioner, being not a party to the said suit.

12. In view thereof, having regard to the nature of the dispute involved in the suit in question, in my opinion, the Trial Court rightly rejected the claim of the petitioner. Writ Petition as such lacks merit and stands dismissed.

(NITIN W. SAMBRE, J.)

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