

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1328 OF 2015

Kamesh Kumar Laxminarayan

.. **Petitioner**

Versus

Laxman Baburao Dake and others

.. **Respondents**

Shri Pradeep N. Sonpethakar, Advocate for the Petitioner.

Shri P. B. Shirsath, Advocate for Respondent Nos. 1 to 4.

CORAM : S. V. GANGAPURWALA, J.

DATE : 14th December, 2017

PER COURT :

1. Mr. Sonpethakar, learned advocate submits that the petitioner is the original plaintiff and has filed suit for injunction in respect of the suit property against the original defendant Nos. 1 to 3. During the pendency of the suit the present respondent No. 1 has filed an application for impleading as a defendant. The learned advocate submits that the petitioner is the dominus litis of his suit and it is his choice as to whom he has to add the party. If the petitioner / plaintiff does not want to litigate against the particular party he cannot be compelled to do so. The learned advocate relies on the Judgment of this court in a case of **Ramesh Shama Kumbhar and another Vs. Sudhakar Budha Kumbhar and others** reported in **2013 (4) Mh. L. J. 81.**

2. I have heard Mr. Shirsath, learned advocate for the respondents.

3. It is contended by respondent No. 1 in the application that in fact he is in possession of the suit property. He is the partner of one M/s. Yogiraj Builders and is also a developer of property C.T.S. No. 4988. The suit property i.e. hall is in his possession. The suit property is a hall on C.T.S. No. 4988. The plaintiff claims to be the partner of one M/s. Krishna Rao and Company and it is stated that they have acquired the suit property from the builder and developer and the builder had executed the lease deed dated 25.9.1998 and letter of possession in favour of the plaintiff.

4. It is not disputed that it is the present respondent No. 1 the applicant of an application under Order 1 Rule 10 (2) of the Civil Procedure Code, 1908 (*hereinafter referred as 'C.P.C.'*) who has entered into transaction with the petitioner of this suit property.

5. There cannot be dispute with the proposition that the plaintiff is the *dominuous litis* of his case and it is his choice to proceed against the particular defendant. The suit is for injunction.

6. Order 1 Rule 10 (2) of the C.P.C. contemplates proper and necessary party. The dispute is with regard to possession. It is alleged that the respondent No. 1 is the person from whom the

plaintiff is put in possession. The said fact is denied by respondent No. 1 and respondent No. 1 states that he is in possession of the property. The same would be directly and materially the part of the dispute. Even in the plaint the plaintiff has come with the case that there is a dispute between the original owner Maharashtra Rashtrabhasha Sabha, Pune and builder. The respondent No. 1 is a partner of that builder. Even the suit amongst them is pending. As the dispute is also reflected in the plaint it would be relevant for the effective adjudication of the case to add respondent No. 1 as defendant. The court below has considered the circumstances and the necessity of the respondent No. 1 to be added as a party. It is observed that the plaintiff is claiming total possession on the basis of the lease deed executed by respondent No. 1 which is being disputed by respondent No. 1.

7. In light of the above, the discretion has been properly exercised by the trial court.

8. The writ petition as such is disposed of. No costs.

[S. V. GANGAPURWALA, J.]

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