

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3612 OF 2017

Jiutbandhan Nanku Jaiswal @ Bhaiyya ...Petitioner

Versus

Jilha Parishand Raigad
Through Chief Executive Officer & Ors. ...Respondents

.....
Mr.Murlidhar L.Patil for the Petitioner.

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**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: APRIL 28, 2017**

P.C. :

1. Rule. Rule made returnable forthwith. The Petition is heard finally and disposed of at the stage of admission.
2. This Petition is directed against the order dated 17.01.2017 passed by the learned Judge, Labour Court, Mahad, On Deputation Civil Judge, Senior Division, Mahad thereby allowing the application of a third party adding him as defendant under Order I Rule 10 of Code of Civil Procedure in Special Civil Suit No. 159 of 2009.

3. The petitioner who is original plaintiff has filed Suit No. 92 of 2005 in the Court of Civil Judge, Junior Division, Mangaon for simplicitor injunction against Jilha Parishad Raigad and the Block Development Officer, Mangaon. The cause of the Suit was a notice dated 10.11.2005 directing the plaintiff to vacate the premises and hand over the possession to one Chotelal Baburam Gupta. The said Chotelal Baburam Gupta has moved the application under Order I Rule 10 of Code of Civil Procedure for impleading him as defendant and it was allowed.

4. The learned counsel for the petitioner submits that the petitioner has filed the Suit against Jilha Parishad for simplicitor injunction, wherein respondent no.3 i.e. third party has no ground to apply under Order I Rule 10 of CPC. Due to the notice given by Jilha Parishad, his peaceful possession of the suit premises is under threat. He further submits that the applicant Chotelal Gupta i.e. respondent no.3 earlier has filed Regular Civil Suit No. 48 of 1995 in the Court of Civil Judge, Junior Division, Mangaon against the petitioner for permanent injunction and removal of encroachment and possession, which was dismissed by the learned Civil Judge, Junior Division, Mangaon, vide order dated

16.02.2000. He further submits that respondent no.3 had filed Civil Appeal No. 41 of 2000 before the District Court, Raigad, but the same was also dismissed and thus there is an order of the Court that he is not in a possession of the suit premises. Under such circumstances, he cannot be made a party to the Suit. The order passed by the learned trial Judge is illegal and needs to be set aside.

5. Perused the plaint of R.C.S. No. 48 of 1995 filed by Chotelal Gupta. The cause of present Suit is notice issued by Jilha Parishad in the year 2005 directing the plaintiff to vacate and hand over the possession to Chotelal Gupta. The plaintiff has also averred that notice was sent at the instance of Chotelal Gupta by Jilha Parishad. The trial Court has rightly held that third party interest is created in the suit property due to this notice and therefore, his presence is necessary to adjudicate the issues correctly. The order dated 17.01.2017 passed by the learned Judge, Labour Court, Mahad, On Deputation Civil Judge, Senior Division, Mahad cannot be faulted with. Hence, Writ Petition is dismissed.

(MRIDULA BHATKAR, J.)