

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7122 OF 2007

Shri Shaikh Harun Hussain Kureshi ...Petitioner

Versus

Smt. Dullhan B. Malangsaheb Konkani & Ors. ...Respondents

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Mr. M.M. Sathaye for the Petitioner.

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CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: APRIL 6, 2017

P.C. :

1. None present for the respondent, though served.
2. In this Writ Petition, the petitioner has challenged the order dated 13th July 2007 passed by the learned 4th Jt. Civil Judge, Junior Division, Nashik in Regular Civil Suit No. 545 of 2004.
3. The petitioner is the original plaintiff had filed the Regular Civil Suit No. 545 of 2004 against the defendants' i.e. respondent nos. 2 to 4 for permanent injunction restraining the defendants from obstructing his peaceful possession as a tenant in the suit property and shall not encroach upon his tenement.

4. It is the case of the petitioner that he is a tenant of one Smt. Rahimabegam M. Kazi and her family members since 1978. He is in exclusive possession of the suit property since 1978 till today as a tenant. In the year 2004, he had knowledge that his landlords have sold this property to respondent nos. 2 to 4 i.e. original defendants. So, he filed the Suit for permanent injunction against them. On 14th October 2005, respondent no.1 had filed an intervention application as a party to the Suit on the ground that she has share in the suit property as it is her ancestral property. Respondent No.1 had also filed the Special Suit No. 115 of 2005, which is pending in the Court of Civil Judge, Senior Division, Nashik in respect of the suit property wherein the present respondent nos. 2 to 4 i.e. original defendants are party defendants and therefore, respondent no.1 is to be added as a party defendant. Considering the case of the intervenor- respondent no.1, the learned 4th Jt. Civil judge Junior Division, Nashik giving decision in her favour directed that she be impleaded as party defendant in the suit property. Hence, this Writ Petition.

5. The learned counsel for the petitioner submits that the intervenor- respondent no.1 has no substantive right in the suit property and the petitioner had filed the Suit for permanent injunction against respondent

nos. 2 to 4. The petitioner is not praying any relief against intervenor-respondent no.1. He further submits that the intervenor had filed the Special Suit No. 115 of 2005 in the Court of Civil Judge, Senior Division, Nashik in respect of the suit property wherein the present respondent nos. 2 to 4 are the defendants. However, the present petitioner is not a party to the said Suit. He further submits that the order dated 13th July 2007 passed by the learned trial Judge is required to be set aside, as the intervenor is not a proper party to the Suit.

6. Perused the plaint, relevant documents, application and the order passed by the learned trial Judge. Considered the submission made by the learned counsel for the petitioner. While deciding the application of the intervenor, it is necessary to see the nature of the suit and the relief prayed by the plaintiff. This suit is for permanent injunction against respondent nos. 2 to 4 i.e. original defendants. The plaintiff/ petitioner is not claiming any relief against the intervenor. It is not the case of the intervenor that she was in possession of the suit property. It appears from her application that the said suit property belongs to her ancestral and her relatives have deleted her name fraudulently from the record of the suit property and therefore, she had filed the Special Suit No. 115 of 2005 in the Court of Civil Judge, Senior Division, Nashik to establish her

right and title in the suit property. Under such circumstances, the intervenor-respondent no.1 has no substantive right, if the relief is granted by the Court in favour of the plaintiff, such order is not going to affect any substantive right of the intervenor-respondent no. 1. Therefore, I am of the view that the intervenor-respondent no.1 is not required to be added to the proceeding and the order dated 13th July 2007 passed by the learned 4th Joint Civil Judge Junior Division, Nashik is set aside. Hence, the Writ Petition is disposed of. Rule is made absolute accordingly.

(MRIDULA BHATKAR, J.)