

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8722 OF 2015

Mahesh Audamber Gaikwad .. Petitioner
Vs.
Vilas Ramchandra Dingare and ors. .. Respondents

Mr.S.S.Raut i/b Mr. S.B.Kalel, for the Petitioner.
Mr.S.S.Chaudhari, for Respondent No.1.
Mr.S.H.Kankal, AGP for State.

CORAM : M.S.KARNIK, J.
02nd FEBRUARY, 2017

PC. :

. The challenge of the petitioner in this Petition is to an order dated 23/04/2015 passed by the learned Civil Judge, Senior Division, Pandharpur in application filed by respondent No.1 under Order 1 Rule 10 of the Code of Civil Procedure, 1908 for impleading respondent No.1 in the Suit as a party defendant in the Suit as according to respondent No.1, he is a necessary party to the Suit.

2. The petitioner – original plaintiff had filed a Suit for declaration and injunction claiming that he is the owner and

cultivator of the suit property. The original defendants No.1 to 3 are the authorities of the State of Maharashtra who claimed ownership over the suit property and their claims have been mutated in the revenue records. According to the petitioner, he is the owner and the names of the original defendants No. 1 to 3 are wrongly mutated.

3. The petitioner claims to have purchased the suit property from the original defendant No.4 by way of registered sale deed. The original defendant No.4 claims to have succeeded to the property on the basis of Will dated 16/09/1998.

4. According to the present respondent No.1 – Intervenor, he is the nephew of Gopal Dingare and as the Will is not probated, he is entitled to succeed to the suit property as the legal heir and therefore, he claims ownership. According to respondent No.1, his impleadment is necessary as defendant No.4 has no right and title in the suit property as the Will is not

probated and therefore, the consequent sale deed in favour of plaintiff is illegal, null and void.

5. The learned trial Judge was pleased to allow the application filed by respondent No.1 by directing his impleadment as defendant No.5 in the said Suit.

6. I have gone through the impugned order. Learned trial Judge has recorded that Civil Misc. Application No. 12 of 2003 filed by the plaintiff for grant of probate on the basis of the said Will was dismissed on the ground of jurisdiction. Thereafter, the present respondent No.1- 3rd party had filed an application under Section 372 of the Indian Succession Act, 1925 for grant of succession certificate and the same is pending before the trial Court being Misc. Application No. 61 of 2011. The original defendant No.4 has filed her objection to the said application. In these circumstances, learned trial Judge was pleased to allow the application.

7. I do not see any reason to interfere with the view taken by the learned trial Judge. The Suit is filed by the petitioner – plaintiff for declaration that he is the owner as against the defendants No. 1 to 3 and for mutating his name in the record of rights is pending. Admittedly, Civil Misc. Application 61 of 2011 is also pending before the trial Court which is filed under Section 372 of the Indian Succession Act, 1925. In these circumstances, I see no reason to interfere with the order passed by the learned trial judge allowing the impleadment application of the present respondent No.1 to be added as original defendant No.5 to the suit proceedings. The Petition is accordingly dismissed.

8. It is needless to mention that the observations made by me and the trial Court are limited to allowing application for impleadment. The trial Court shall not be influenced by the observations made herein above and the Suit may be proceeded on its own merits and in accordance with law.

(M.S.KARNIK, J.)