

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

WRIT PETITION NO.5412 OF 2017

Shri.Dattaprasad Ratanlal Jakediya ..Petitioner
V/s.
Sonali Parasmal Bafana & Ors. ..Respondents

Mr.Abhijit P. Kulkarni for the Petitioner.

Mr.Tejas A. Luniya for the Respondent.

CORAM : M. S. SONAK, J.

DATE : 11th AUGUST 2017

P.C.

1. Heard Mr.Abhijeet Kulkarni for the petitioner and Mr.Tejas Luniya for respondent No.1.

2. The Respondent No.1 is the original plaintiff in RCS No.604 of 1997 instituted by him to evict respondent No.2 from the suit premises.

3. The petitioner, applied for impleadment in the said suit by taking out Exhibit.137, claiming that it is the petitioner who is the owner of property bearing CS No.3271 in which the suit premises are set to be located. The learned Trial Judge by the

impugned order dated 11-07-2016, has rejected Exhibit.137. The petitioner has accordingly, instituted the present petition to question the impugned order dated 11th September 2016.

4. I have heard the learned counsel for the parties and perused the material on record.

5. In the matter of this nature, I agree with the learned Trial Judge that the petitioner was not required to be permitted or impleaded as either a necessary party or proper party. If at all, the petitioner has any issues with regard to the title to property bearing CS No.3271 it is for the petitioner to take out independent proceedings if permissible under the law. However, it is not for the petitioner to seek impleadment or intervention in the present suit, which is purely a suit between the landlord and the tenant. Accordingly, the conclusion recorded by the learned Trial Judge is not required to be disturbed.

6. However, Mr.Kulkarni the learned counsel for the petitioner is right in his submission that the learned Trial Judge has exceeded his jurisdiction by recording certain findings in paragraph No.5 of the impugned order on the merits of the dispute between

the petitioner and respondent No.1 in relation to the property bearing CS No.3271. Although, the learned Trial Judge has observed that such findings are prima facie, I agree with Mr.Kulkarni that there was really no necessity to record such findings. Accordingly, it is clarified that such findings shall in no manner affect the issue of title of the parties to property bearing CS No.3271. In case, the petitioner chooses to agitate the issue of title before the appropriate forum, such appropriate forum shall ignore such findings, as, such findings were not at all necessary or in any case, such findings are hardly to be regarded as findings, since, they have been recorded at the stage of considering a motion under Order I Rule 10 of C.P.C.

7. With the aforesaid clarification this petition is disposed of. The conclusion recorded by the learned Trial Judge is left undisturbed. However, it is clarified that the findings as to title in paragraph No.5 are to be ignored in any substantive proceedings in which the parties may be involved in future.

(M. S. SONAK, J.)