

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

WRIT PETITION NO. 2367 OF 2014

Shri Laxminarayan Jamunaprasad Mishra & ors. ... Petitioners.
Versus
Shri Haribhau Balaram Patil & ors. ... Respondents.

Ms. Aparna Shinde, advocate for petitioner.
Mr. R.S. Datar, advocaste for respondent No. 9.
Ms. Vaishali Nimbalkar, AGP for respondent No. 14.

**CORAM : SMT.SADHANA S. JADHAV,J
DATE : OCTOBER 12, 2017**

P.C.:

1 Heard the learned Counsel for the petitioners and the learned Counsel for the respondents.

2 Rule. Rule made returnable forthwith with the consent of the parties.

3 The Petitioner herein happens to be the original plaintiff in Special Civil Suit No. 405 of 2012 pending before the Civil Judge,

S.D. at Panvel. The suit was filed for specific performance and perpetual injunction. The Defendant No. 9 had filed written statement and by way of written statement has raised objection that the suit is bad for non-joinder of the necessary parties. It was demonstrated by the original defendant No. 9 that in view of paragraph-8 of the plaint one Mr. Shashi Patil would be a necessary party and in the absence of Shashikant Krushna Patil, claim of the plaintiff should not be considered. The written statement was filed on 16/4/2013.

4 The Petitioner herein had filed an application under Order 6 Rule 17 seeking the relief to implead Shashikant Krushna Patil as necessary party to the suit. The said application was filed on 8/7/2013 i.e. just within 3 months from the date of filing of the Written Statement. The said application was rejected by the learned Civil Judge, S.D. with cost on 20/10/2013 on the ground that the plaintiff had not tendered any explanation as to why the said person

i.e. Shashikant Krushna Patil not made party to the suit at the very inception i.e. at institution of the suit. Hence, this Writ Petition.

5 Learned Counsel for the Petitioner submits that although the explanation was not given in the application under Order 6 Rule 17, the pleadings in the plaint, more particularly in paragraph-8 of the plaint would clearly indicate the reasons why Mr. Shashikant Patil was not added as a necessary party at the time of the institution of the suit. It is contended in paragraph-8 of the plaint that in fact the said person i.e. Shashikant Patil was entitled to 1250 sq. meters. He had waived his share in favour of the plaintiff by letter dated 11/7/1999 and he was given due consideration for the same and therefore, at the time of institution of suit, the defendant Nos. 1 to 3 had interests in the said properties. This by itself would be sufficient an explanation for not impleading Shashikant Patil as party respondent. However, since the defendant No. 9 had raised objection that the suit should fail on account of non-joinder of the necessary parties. The plaintiffs had filed an application seeking impleadment.

6 The learned Counsel for the respondent No. 9 has vehemently opposed the grant of relief on the ground that although the paragraph-8 indicated the erstwhile interest of Shashikant Patil, the same was not mentioned in the application under Order 6 Rule 17 and therefore, the learned Judge had rightly rejected the application. It is also submitted that the plaintiff would be liable to be saddled with cost.

7 It is seen from the averment in the petition as well as oral submission that the impleadment of Shashikant Patil would not cause any prejudice to any of the original tenant. In fact, it was the contention of the defendant that the suit is bad for non-joinder of the necessary party and therefore, the petition deserves to be allowed. In the above circumstances, the order dated 20/10/2013 passed by the Joint Civil Judge, S.D., Panvel deserves to be quashed and set aside.

8 The learned Counsel for the respondent submits that the application below Exh. 5 was rejected by the learned Civil Judge, S.D., Panvel. Being aggrieved by the said order, Misc. Civil Appeal is filed before the District Court and due to pendency of the Writ Petition, Misc. Civil Appeal is pending. In case, the impleadment of Shashikant Krushnaji Patil would not be a ground to keep Misc. Civil Appeal pending and the same be disposed of in accordance with law at the earliest.

9 Hence following order is passed :

ORDER

- (i) The Petition is allowed.
- (ii) The order dated 28/10/2013 passed by the Joint Civil Judge, S.D., Panvel deserves to be quashed and set aside.

(iii) The original plaintiffs i.e. petitioners be permitted to implead Shashikant Krushnaji Patil as party defendant, if necessary and obviously the plaintiffs are entitled to amend the plaint only to the extent of the averments concerning to Shashikant Patil. The defendant would be entitled to file additional written statement.

(iv) Since the suit is 5 years old, impleadment and amendment of the plaint be expedited only in the eventuality that it is carried out on or before 15/11/2017.

10 The Rule is made absolute in the above terms and petition is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)