

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2572 OF 2017

PAVITRA TARAKACHE MANDAL THROUGH ITS TRUSTEES FARANK
JAMES GAMARE AND OTHERS
VERSUS
THE AHMEDNAGAR MUNICIPAL CORPORATION, AHMEDNAGAR AND
OTHERS

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Advocate for the Petitioners : Shri Karpe Rahul R..
Advocate for Respondents 2 to 6 : Shri Gaware Niteen V.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 13th August, 2018

Per Court:

1 The Petitioners are aggrieved by the interlocutory order dated 06.01.2017 delivered by the Appellate Court by which, the application Exhibit-15, filed by the third parties/ Respondent Nos.2 to 6 under Order 1 Rule 10 of the Code of Civil Procedure in Regular Civil Appeal No.30/2011, has been allowed.

2 The strenuous contentions of the Petitioners/ Plaintiffs can be summarized as under :-

- (a) The Municipal Corporation had issued the notice dated 31.08.2007 by which, it intended to remove certain portions of illegal construction by demolishing it.

- (b) The Plaintiffs filed the suit bearing RCS No.342/2007 against the Ahmednagar Municipal Corporation for seeking injunction, without impleading the third parties.
- (c) The said suit has been dismissed on 05.01.2011.
- (d) The Plaintiffs filed RCA No.30/2011 without impleading the third parties, who filed Exhibit-15.
- (e) The Plaintiffs contended that they have not sought any relief against these third parties and they are not required to be impleaded in the proceedings.
- (f) Neither do the Plaintiffs desire to workout the appeal against the third parties, nor do they desire to seek any relief against them.
- (g) By invoking the doctrine of *dominus litus*, the Plaintiffs, who are masters of the suit, cannot be compelled to add any person against whom they do not intend to seek any injunction.
- (h) Reliance is placed upon the judgment delivered by this Court dated 04.05.2018 in Writ Petition No.3398/1998 in the matter of ***Santosh Hanumant Salunkhe vs. The Municipal Corporation, Ahmednagar and another***, wherein, this Court (Coram : V.L.Achliya, J.) has set aside the order of permitting the addition of the third party on the ground that the third

party had no interest in the suit property or litigation.

3 I have considered the strenuous submissions of the learned Advocates for the respective sides.

4 The facts in the *Santosh Salunkhe case (supra)* are distinguishable from the facts in this case. In Santosh Salunkhe case (supra), a person seeking addition as a respondent, was not in any way connected with the hair saloon or shop premises or business being conducted by Santosh. The person, who sought addition, was residing at a distant place and the reasons cited for impleading him as a defendant, did not indicate any relationship between him and the said hair saloon.

5 In the instant case, Respondent Nos.2 to 6/ third parties claim to have purchased the suit property by a sale deed. They are relying upon the sale deed to contend that they have the ownership of the suit property and the Plaintiffs have claimed injunction against the Municipal Corporation ignoring these third parties. The Plaintiffs contend that they have acquired the title in the suit property on the basis of the Gift Deed from that predecessor-in-title from whom the third parties claim to have purchased the same suit property. On this set of facts, prima facie, it appears that the third parties claim to have ownership over the suit property and it would be inappropriate to keep them away from the suit in which, the Plaintiffs intend to demonstrate that they are the only title

holders in the suit property. It is on these facts that the Appellate Court has permitted the addition of these third parties by the impugned order.

6 Considering this set of facts, I do not find that the impugned order could be termed as being perverse or erroneous. This Writ Petition being devoid of merit is, therefore, dismissed.

7 Keeping in view that the appeal is pending since 2011, the learned Advocates jointly request for an expeditious hearing. The Appellate Court shall, therefore, decide RCA No.30/2011 as expeditiously as possible and in any case, on or before 31.01.2019.

kps

(RAVINDRA V. GHUGE, J.)