

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

40 WRIT PETITION NO. 5414 OF 2017

NASEEMABEGUM KHAJA KHAMROUDDIN SHAIKH
VERSUS
ABDUL KHUDUS ABDUL SAYED SHAIKH AND ANOTHER

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Advocate for Petitioner : Mr. Deshpande Gaurav L.
Advocate for Respondent : Mr. Tungar Hrishikesh V.

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CORAM : V. K. JADHAV, J.
DATED : 12th MARCH, 2018

PER COURT:-

1. Heard finally with consent at admission stage.
2. The petitioner/third party has filed an application exhibit 131 in R.C.S. No. 192 of 2010 under Order I Rule 10 of the Code of Civil Procedure, 1908 for impleading herself as a party defendant in the said suit. The respondent/plaintiff has strongly resisted the said application by filing say. The learned 2nd Joint Civil Judge, Junior Division, Ausa, by impugned order dated 11.04.2017 passed below exhibit 131, rejected the said application. Hence this Writ Petition.

3. The learned counsel for the petitioner/third party submits that the petitioner is the real sister of the original defendant in the present suit and the petitioner has instituted R.C.S. No. 280 of 2013 for declaration in respect of one sale deed to the effect that the same is not binding on the right, title and interest of the petitioner and also for a decree of perpetual injunction. The learned counsel for the petitioner submits that the petitioner has instituted the said suit in respect of same property and almost amongst the same parties. The learned counsel submits that in view of the same, the petitioner is a necessary party to the present suit. However, the trial court has not considered the same. The learned counsel submits that even in a suit instituted simpliciter for a decree of perpetual injunction, addition of a party to the proceedings can be considered and allowed in order to effectually and completely adjudicate upon and settle all the questions involved in the suit.

4. The learned counsel for the petitioner, in order to substantiate his contention, placed reliance on the decisions in the following two cases:

1. ***Ramesh Hirachand Kundanmal vs Municipal Corporation of Greater Bombay and others***, reported in ***(1992) 2 SCC 524*** and
2. ***Sushil Kaur w/o Sukbhirsingh Chhatwal and others vs Aurangabad Ginning and Pressing Factory and another***, reported in ***2012 (2) Mh.L.J. 295***.

5. The learned counsel for the respondent/original plaintiff submits that the plaintiff is the *dominus litis* of his case in a suit instituted simpliciter for a decree of perpetual injunction and since no relief is claimed against the petitioner in any manner and the relief has been claimed only against the original defendant, the application for addition of parties under Order I Rule 10(2) of the Code of Civil Procedure is unwanted and uncalled for. The learned counsel submits that the respondent/plaintiff has instituted the suit in the year 2010 against the real sister of the present petitioner. The petitioner was knowing the same. However, she remained idle for a period of three years and thereafter instituted the suit seeking declaration against the vendor of the present respondent/plaintiff. The learned counsel submits that this is nothing but a

deliberate move to counter the suit earlier instituted by the respondent/plaintiff. The learned trial court has therefore rightly rejected the application exhibit 131. No interference is required.

6. The learned counsel for the respondent/original plaintiff, in order to substantiate his contention, placed reliance on the decision in the following case:

Ramesh s/o shama Kumbhar & Anr. Vs Sudhakar s/o Budha Kumbhar & Ors., reported in **2013 (3) All MR 196**.

7. In the case of ***Ramesh Hirachand Kundanmal*** (supra), relied upon by the learned counsel for the petitioner, the Supreme Court has dealt with the provisions of Order I Rule 10(2). The Supreme Court has considered as to who is the necessary and proper party in a suit relating to the property and the person having a direct or legal interest in the litigation may be added as a party defendant to the suit. The Supreme Court has also observed that the court has a judicial discretion which has to be exercised having regard to the facts and circumstances of each case.

8. In the case of ***Sushil Kaur w/o Sukbhirsingh Chhatwal and others*** (supra), relied upon by the learned counsel for the petitioner, this Court, in almost identical facts, permitted addition of parties in a suit instituted simpliciter for a decree of perpetual injunction. However, the facts of the case cited above are altogether different. There is long standing litigation between the parties and they have instituted many suits against each other in respect of the same suit property. In the given set of facts and circumstances, this Court held that the discretion as observed by the Supreme Court in the aforesaid case, is required to be exercised in favour of the person who has filed the application under Order 1 Rule 10 for impleading him as a party in the suit.

9. In the case of ***Ramesh s/o shama Kumbhar*** (supra), relied upon by the learned counsel for the respondent/plaintiff, this Court, in identical facts of the case, has taken a view that in a suit for simpliciter injunction, the orders would be binding only to the parties to the suit and that the proposed party who is not party to the suit, would not be bound by the order in the suit and the application for addition of parties is liable to be rejected.

10. In the instant case, the respondent/plaintiff had instituted the suit simpliciter for perpetual injunction in the year 2010. In the said suit, the defendant, who happened to be the real sister of the present petitioner, has not filed any counter claim. Moreover, the present petitioner has also not instituted any suit for near about three years and in the year 2013, she has instituted R.C.S. No. 280 of 2013 for declaration in respect of the sale deed, which has been executed in favour of the vendor of the present respondent/plaintiff by the original owner, as not binding on the interest of the petitioner and her family. It thus appears that with some particular oblique motive, after a gap of three years, the subsequent suit has been instituted. These are the *prima facie* observations. However, in the given set of facts, I do not find any fault in the order passed by the trial court. There is no substance in the Writ Petition and it is liable to be dismissed. The Writ Petition is accordingly dismissed. No costs.

(V. K. JADHAV, J.)

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