

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

937 WRIT PETITION NO. 9898 OF 2018

SHAIKH SHAKEEL SHAIKH MUKHTAR
VERSUS
MUNICIPAL COUNCIL JINTUR AND OTHERS

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Advocate for Petitioner : Shri Syed G R

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CORAM : RAVINDRA V. GHUGE, J.

Dated: August 29, 2018

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PER COURT :-

1. The petitioner / plaintiff is aggrieved by the order dated 24.4.2018, passed by the trial Court in RCS No.13 of 2018, by which, application Exhibit 17 filed by third party has been allowed and they have been directed to be arrayed as defendants.

2. The grievance of the petitioner is that he has filed the suit for seeking perpetual injunction against the Municipal Council, Jintur for restraining the Council or it's representatives from obstructing the peaceful and lawful possession of the plaintiff in respect of land S.No.140/CHHA admeasuring 11 Ares. The plaintiff has constructed, "Friends Health Club" in a tin shade on the suit property.

3. Reliance is placed on the judgment of this Court in the matter of Omprakash Vs. Parvatibai [2016 (1) Mh.L.J.847], to support the

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contention that the plaintiffs need not add strangers to the suit and the plaintiffs have to decide who should be the respondents in their suit.

4. I have considered the submissions of the learned Advocates for the petitioners and have gone through the petition paper book.

5. The Municipal Council seeks to demolish the illegal tin shade erected by the plaintiff. The third party upon getting knowledge of the pending suit instituted on 22.1.2018, have immediately approached the trial Court with application Exhibit 17 filed on 22.3.2018. It is brought to the notice of the trial Court by the third party that they had purchased the suit property by virtue of a registered sale deed and they are the owners of the said property. They were not aware about the encroachment and the moment they got the knowledge of the suit, they have immediately approached the Court within two months seeking intervention as the plaintiff has no legal right over the suit property. The trial Court has allowed the application after arriving at a finding that these third parties seem to have some right in the suit property and it would not cause prejudice to any litigating sides if they are permitted to participate in the said suit. The trial Court noted that any favourable direction granted in the suit might lead to the plaintiff taking advantage

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of such orders.

6. I do not find that the impugned order invoking Order I Rule 10 of the CPC could be branded as being perverse or erroneous. Needless to state, if eventually it is concluded by the trial Court that these third parties have attempted to play a fraud, it may issue appropriate directions as deemed fit and proper.

7. In view of the above, this petition being devoid of merits is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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Ajay
Kishanrao
Losarwar

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