

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

903 WRIT PETITION NO. 7080 OF 2013
WITH CA/4304/2014 IN WP/7080/2013 WITH WP/5718/2014

NANDLAL@NANDKUMAR KISHANPRASAD DUBE
VERSUS
THE STATE OF MAHARSHTRA AND OTHERS

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Advocate for Petitioners : Mr. Bhandari Anand P.
AGP for Respondent Respondent-State : Mr. S. N. Morampalle
Advocate for Respondent No.3 : Mr. R. V. Deshmukh
Advocate for Respondent Nos. 4 to 8 : Mr. C. V. Thombre

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CORAM : V. K. JADHAV, J.
DATED : 04th APRIL, 2018

PER COURT:-

1. Heard finally with consent at admission stage.
2. The petitioner/original plaintiff has instituted the suit bearing RCS No. 576 of 2012 for declaration of ownership not against any particular person but sought direction against the respondents/original defendants to take entries in the Revenue record in respect of the suit property in the name of the petitioner/plaintiff. During pendency of the said suit, respondent no.3 in Writ Petition No.7080 of 2013 filed an application Exhibit 16 under Order 1 Rule 10(2) of the Code of Civil

Procedure for impleading him as party defendant in the suit on the ground that he is in possession of the suit property for more than 50 years. Similarly, respondent nos.4 to 8 in Writ Petition No. 5718 of 2014 have also filed an application Exhibit 24 under Order 1 Rule 10(2) of C.P.C. for impleading them as party defendants in the suit on the ground that they are the legal heirs of Dwarkaprasad and as such, they are the necessary parties to the suit. The petitioner/plaintiff has strongly resisted both the applications by filing say and the trial court by passing separate orders on these two applications Exhibits 16 and 24 respectively, allowed the said applications. Hence these two Writ Petitions are filed by the petitioner/original plaintiff.

3. The learned counsel for the petitioner submits that the petitioner is the *dominus litis* of his suit and in the given set of facts, respondent nos. 3 to 8 are neither necessary parties nor proper parties to the suit. The learned counsel submits that the trial court has not allowed the petitioner to resist the application Exhibit 24 and as such, decided the said application without there being any say filed by the present petitioner/original plaintiff.

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

1. *Gopikabai Nathuram Malewar & another vs Bapurao Mahadeorao Surkar*, reported in 1996 (0) BCI 5,
2. *Waman Nago Choudhari & Ors. vs Mahadu Nago and Brothers & Ors.*, reported in 2011 (4) BCR 632 and
3. *Writ Petition No. 5330 of 2009 (Shri Ramanlal s/o. Thakurdas Parikh vs Syed Ayyas s/o. Syed Musa and Ors.)* decided by this Court on 03.05.2010.

5. The learned counsel for respondent nos. 3 to 8 submit that as per the 7/12 extract placed on record, the father of respondent no.3 was declared as tenant in respect of the suit property and further, there is specific entry in the other rights column of the 7/12 extract in respect of the suit property that he is also in possession of the land ad-measuring 11 acres and 9 gunthas. The learned counsel submits that respondent no.3 is in possession of the suit land since his forefathers for more than 50

years. However, without impleading him as a party defendant in the suit, the petitioner is seeking declaration of ownership in respect of the suit property. The learned counsel for the respondents submit that as per the pleading of the petitioner/plaintiff, one Murliprasad Dube was the common ancestor. He died some 50 years back. Kisanprasad Dube was the son of the said Murliprasad. Said Kisanprasad Dube had three sons namely, Deviprasad, Dwarkaprasad and Nandkumar @ Nandlal (plaintiff) and four daughters and out of these three sons, Deviprasad and Dwarkaprasad died in the year 1997. Both of them were unmarried. The learned counsel submit that respondent nos. 4 to 8 are claiming their rights and interest in respect of the suit property through deceased Dwarkaprasad. Deceased Dwarkaprasad was survived by his real sister Sulochana and respondent nos. 4 to 8 are the legal heirs of deceased Sulochana. Learned counsel submit that considering the rights and interest of the present respondent nos. 3 to 8 in respect of the suit property, the trial court has allowed the aforesaid applications exhibits 16 and 24. No interference is required. There is no substance in the Writ Petitions and the same are liable to be dismissed.

6. It is pertinent that the petitioner/plaintiff has instituted the suit for declaration of ownership against no particular person and in the said suit, the petitioner is merely seeking a direction to the respondents-State of Maharashtra and the Tahsildar to take appropriate entries in the Revenue record in respect of the suit property in his name. On perusal of the 7/12 extract, it appears that the father of respondent no.3 was a declared tenant in respect of the suit property and in addition to that, there is a specific reference about his possession on the basis of one agreement of sale in respect of the land admeasuring 11 acres 9 gunthas out of the suit property. According to respondent no.3, he is in possession of the said portion of the suit land since his forefathers for more than 50 years. Further, it also appears on the basis of the averments made in application exhibit 24 that respondent nos. 4 to 8 are claiming their rights in respect of the suit property through deceased Dwarkaprasad whose relation with the father of the present petitioner is not disputed.

7. In the case of *Kasturi vs Iyyamperumal and ors*, reported in (2005) 6 SCC 733, though the Supreme Court had an occasion to deal with the provisions of Order 1 Rule 10(2) of

C.P.C. in a suit related to the specific performance of contract, the Supreme Court has observed that the question of jurisdiction of the court to invoke Order 1 Rule 10 of C.P.C. to add a party who is not made a party in the suit by the plaintiff shall not arise unless a party proposed to be added has direct and legal interest in the controversy involved in the suit. The Supreme Court has further observed that a person is legally interested in the answers to the controversies only if he can satisfy to the court that it may lead to a result that may affect him legally. The Supreme Court has considered two tests to be satisfied for determining the question as to who is a necessary party; (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings and (2) no effective decree can be passed in absence of such party.

8. In the case of *Sumtibai and Ors. vs. Paras Finance Co. Regd. Partnership Firm Beawer (Raj.) & Ors.*, reported in *(2007) 10 SCC 82*, the Supreme Court has observed that in order to determine the proper party in terms of the provisions of Order 1 Rule 10(2) of C.P.C., if a party can show a fair semblance of title or interest, he can certainly file an application

for impleadment. The Supreme Court has thus explained the observations made in the earlier *Kasturi's* case.

9. In the case of *Mumbai International Airport Private Limited vs Regency Convention Centre and Hotels Private Limited and Ors.*, reported in (2010) 7 SCC 417, the Supreme Court, while dealing with the provisions of Order 1 Rule 10(2) of C.P.C., observed that the discretion of a court to add a person as a party is limited to persons found to be necessary party or proper party and as such, the discretion is judicial and has to be exercised according to the reasons and fair play and not according to the whims and caprice. The Supreme Court has also considered the general rule in regard to the impleadment of parties, that the plaintiff in a suit, being *dominus litis*, may choose the person against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief, to observe that the said general rule is subject to the provisions of Order 1 Rule 10(2) of C.P.C. by which the court is given the discretion to add as a party, any person who is found to be necessary party or proper party. The Supreme Court has further explained that a “necessary party” is a person who ought

to have been joined as a party and in whose absence no effective decree can be passed at all by the court and if a “necessary party” is not impleaded, the suit is liable to be dismissed. A “proper party” is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made.

10. In the case of *Gopikabai Nathuram Malewar & another vs Bapurao Mahadeorao Surkar* (supra), relied upon by the learned counsel for the petitioner, this Court had an occasion to consider the provisions of Order 1 Rule 10(2) of C.P.C. in respect of the suit instituted for possession. In the facts of the said case, this Court has held that merely because an agreement to sell has been executed in favour of one Barmadin Dubey, it cannot be said that any title has been created in favour of said Barmadin regarding the property in question and as such, the presence of said Barmadin is not at all necessary for determination of the real matter in dispute. The facts of the cited case are altogether different and cannot be made applicable to the present case.

11. In the case of *Shri Ramanlal s/o. Thakurdas Parikh vs Syed Ayyas s/o. Syed Musa and Ors.* (supra), relied upon by the learned counsel for the petitioner, this Court had an occasion to deal with same provisions with regard to a suit presented by the plaintiffs claiming a decree of perpetual injunction. Thus, considering the relief claimed in the suit, this Court held that by its very nature, the claim raised in the plaint is a relief in *personam* and in such circumstances, the third party applicants cannot be considered as persons likely to be affected by the final decree.

12. In the instant case, respondent nos. 3 to 8 are the persons who are likely to be affected by the decree passed in the suit wherein the petitioner has claimed relief of declaration of ownership not against any particular person. Though respondent nos. 3 to 8 have rights and interest in respect of the suit property to the extent as detailed in their respective applications, they are not impleaded as party defendants in the suit. The learned Judge of the trial court has therefore rightly exercised discretion as contemplated under Order 1 Rule 10 of C.P.C. I do not find any

fault in the impugned orders. There is no substance in both the Writ Petitions. Hence the following order:

ORDER

- I. The Writ Petition No. 7080 of 2013 and Writ Petition No. 5718 of 2014 are hereby dismissed. In the circumstances, there shall be no order as to costs.
- II. It is made clear that the observations made while deciding these Writ Petitions are *prima facie* and it is for the trial court to dispose of the suit on its own merits after considering the oral and documentary evidence led by the respective parties.
- III. In view of dismissal of the Writ Petitions, pending Civil Application also stands disposed of.

(V. K. JADHAV, J.)

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