

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

35 WRIT PETITION NO. 10806 OF 2017

RAMCHANDRA S/O MOTIRAM KORADKAR AND OTHERS
VERSUS
KALYAN S/O JYOTIBA KORADKAR AND OTHERS

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Advocate for Petitioners : Mr. Rode Dilip B.
Advocate for Respondent Nos. 1 to 4 : Mr. P. S. Gaikwad
Advocate for Respondent No.5 : Mr. A. G. Talhar

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CORAM : V. K. JADHAV, J.
DATED : 20th FEBRUARY, 2018

PER COURT:-

1. Heard finally with consent at admission stage.
2. I find no substance in this Writ Petition. The petitioners-original plaintiffs have instituted the Suit for simpliciter perpetual injunction in respect of the suit property Gat No. 195. Pending the Suit, the respondent no.5-Group Gram Panchayat of Kokangaon-Bhavdi, through its Gram Sevak has filed application Exhibit 24 for impleading the Group Gram Panchayat as party defendant. The said application Exhibit 24 came to be filed under Order 1 Rule 10 of the Civil Procedure Code in pending

R.C.S. No. 325 of 2016. The Joint Civil Judge Junior Division, Shrigonda, by impugned order dated 25.07.2017 passed below Exhibit 24, has allowed the application Exhibit 24 and directed to implead the third party as party defendant. Hence this Writ Petition.

3. The learned counsel for the petitioners-original plaintiffs submits that the plaintiffs have instituted the Suit for decree of perpetual injunction in respect of the suit property against the defendants and if any order is passed in the Suit, that would bind only the parties to the suit. The learned counsel submits that the trial Court has not considered the same and passed the impugned order erroneously.

4. Learned counsel for the petitioners, in order to substantiate his contentions, placed reliance on the decisions in the following two cases:

1. ***Ramesh s/o Shama Kumbhar & Anr. vs. Sudhakar s/o Budha Kumbhar & Ors.***, reported in **2013(3) ALL MR 196** and
2. ***M/s. Dempo Mining Corporation Pvt. Ltd. vs. Shri Pradit Naik & Ors.***, reported in **2015 (3) All MR 276**

5. The learned counsel for respondent no.5-Gram Panchayat submits that in the suit land Gat No.195, there is a water tank and the said water tank is in possession of the said Gram Panchayat of Kokangaon-Bhavdi. The learned counsel submits that in drought situation, the Gram Panchayat distributes water to the adjoining area from the said water tank. The learned counsel submits that the name of the plaintiffs in 7/12 extract in respect of Gat No.195 are the hollow entries and the plaintiffs are not in possession of the properties situated in the land Gat No.195. The learned counsel submits that way back in the year 1952, the said water tank came to be constructed. On the other hand, the learned counsel for the petitioners submits that there is no record of acquisition of land from Gat No. 195.

6. On careful perusal of the documents submitted alongwith the Writ Petition and also the documents submitted by respondent no.5-Gram Panchayat, particularly the 7/12 extract, it appears that the entire land in Gat No. 195 is shown as “*talav pad*”. The entry in the cultivation column unmistakably points out that the land Gat No. 195 is not under cultivation. On perusal of the copy of the plaint, I find that the petitioners-

plaintiffs have not at all given reference to any water tank in the four boundaries of the suit land. *Prima facie*, it appears that the petitioners-plaintiffs have suppressed the material facts and approached the Civil Court with unclean hands. If the water tank has been constructed by the Government and the Group Gram Panchayat of Kokangaon-Bhavdi distributes water during drought to Beed and Ahmednagar Districts, then, in the peculiar facts and circumstances of the present case, the trial Court has rightly allowed the application Exhibit 24. No interference is required. Hence, I proceed to pass the following order:

ORDER

- I. The Writ Petition is hereby dismissed. No costs.
- II. The Writ Petition is accordingly disposed of.

(V. K. JADHAV, J.)

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