

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11309 OF 2018

SAYYAD KHAJA SAYYAD MOHIYODDIN
VERSUS
DIGAMBAR GANGARAM HALDE AND OTHERS

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Advocate for Petitioner : Shri Mukhedkar Amit A.
AGP for Respondents 2 to 4 : Shri Patil K.S.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: October 11, 2018
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PER COURT :-

1 The petitioner is aggrieved by the order dated 4.9.2018 passed by the trial Court, by which, an application filed by a third person, respondent No.1 herein, for adding him as a defendant in RCS No.130 of 2014, has been allowed.

2 Grievance is that when the Advocate for the petitioner was on leave, the trial Court has considered the application filed by the third party. Without hearing the petitioner, the impugned order is passed.

3 In so far as merits of the application filed by the third party are concerned, it is contended that he is a stranger to the suit. The petitioner / plaintiff has sought injunction against defendant No.3 - Superintendent of Land Records in the nature of a direction to measure

the land by demarcating the boundaries, by considering land Gut No.37/A admeasuring 55 Ares. Though in the claim title a direction is sought to defendants 2 and 3 to measure the land and fix the boundaries, the prayer made in the plaint is restricted to defendant No.2. Reliance is placed upon the judgment of the Honourable Apex Court in the matter of Kasturi Vs. Iyyamperumal and others [2005 (3) Mah.L.J. 1], in which, it is held, while dealing with the suit for specific performance, that a stranger to the contract cannot seek addition in such a suit and make a claim, which is adverse to the title of the litigating sides.

4 I find that this Court has earlier dealt with the dispute between the parties in Writ Petition No.2445 of 2018 and by judgment dated 16.4.2018, the application filed by the third party was restored and the parties were directed to conduct the said proceedings on the date as is posted by the trial Courts. Despite the order of this Court, the said application was not taken up until 4.9.2018, when one of the Advocates out of four for this petitioner, was absent.

5 Notwithstanding the above, I have heard the learned Advocate for the petitioner on the merits of the matter. The third party has pleaded in his application that incorrect boundaries have been supplied by this petitioner. The third party was a necessary respondent as there

was an earlier suit bearing RCS No.882 of 2012, wherein, the application for measurement of the suit land was rejected by the trial Court. It is averred that the third party is a co-sharer and owner and in possession of 36 Ares of land out of the same Gut No.37/A admeasuring 55 Ares. As such, the participation of the third party is necessary in measuring the suit property, which would in fact, amount to a measurement of his land, and that too in his absence. This convinced the trial Court to pass the impugned order.

6 In view of the above, I do not find that the impugned order could be termed as being perverse or erroneous. The writ petition is, therefore, dismissed. It is, however, directed that as the suit is only for seeking a direction for the measurement of the land Gut No.37/A, the trial Court shall decide RCS No.130 of 2014 as expeditiously as possible and in any case, on/or before 31.3.2019.

(RAVINDRA V. GHUGE, J.)

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