

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 10328 OF 2014

Mahesh Seva Samiti, Nanded  
Through its Authorized Trustee,  
Shri. Narayanlal S/o Pannalalji Kalantri  
Age : 69 years, Occu.: Business,  
R/o. Visawa Nagar, Nanded .. Petitioner

Versus

- 1] Bansilal S/o Chotulal Gawali  
Age : 95 years, Occu.: Nil,  
R/o. Killa Road, Holi, Nanded
- 2] Dhannalal S/o Bansilal Gawali  
Age : 55 years, Occu.: Nil,  
R/o. As above
- 3] Sardar Ajitsingh S/o Babusingh,  
Age : 40 years, Occu. : Business,  
R/o. Gurudwara Road,  
Nanded

**[That, respondent nos.1 to 3  
are formal parties to the present  
proceedings, hence no notice of  
this Writ Petition is required]**

4. Ramesh S/o Ramkishanji Sarda,  
Age : 58 years, Occu.: Business,  
R/o. Ramkrishna Complex,  
Visawa Nagar Road,  
Nanded, Dist. Nanded .. Respondents

...

Mr. S.S. Rathi, Advocate for petitioner  
Mr. S.G. Dodya, Advocate for respondent no.4  
Respondents no. 1 to 3 - formal parties - no notice issued.

...

CORAM : SUNIL P. DESHMUKH, J.  
DATE : 18-06-2018

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith.
2. Heard learned counsel for the parties finally, by consent.
3. Writ petition impugns order dated 04-08-2012, whereunder application exhibit 105 in regular civil suit no. 76 of 2012 (old regular civil suit no. 72 of 2005) has been allowed. Application - Exhibit - 105 has been preferred seeking impleading present respondent no. 4 as plaintiff no. 19 in the suit.
4. It would be pertinent to refer to that parties concur on the factual position that the suit has been instituted by and on behalf of the trust by plaintiffs against defendants no. 1 to 3, wherein name of present respondent no. 4 does not figure as defendant. Parties further concur on that the suit is for simplicitor perpetual injunction against the defendants therein, plaintiffs claiming to be in possession of suit property.
5. It may have to be noted that present respondent no.4 had earlier on 06-06-2005, under exhibit - 30 applied for getting

impleaded as a necessary party to the suit.

6. Trial court has observed that in the present matter, petitioners as plaintiffs have filed the suit against defendants no. 1 to 3 / present respondents no. 1 to 3 for perpetual injunction restraining them from interfering with their possession of suit land *gat* no. 30 to the extent of 3 *Hectare* and 52 *Are*. The trial court had also observed that there would be no cause of action against the present respondent no.4 and, as such, present respondent no.4 had not been considered to be a person worth adding party to the suit, finding, *inter-alia*, that powers invested in the courts are discretionary. The application – Exhibit – 30, accordingly, had been rejected on 15-11-2005.

7. Subsequently, it appears after recording evidence of plaintiffs' witness no.1, aforesaid application - Exhibit 105 has been moved.

8. The factual position appears to have been considered by trial court then that special civil suit no. 242 of 1996 had been instituted by present respondent no.4 seeking specific performance of contract of sale in respect of land *gat* no. 30 of village Kavatha, Tq. Nanded to the extent of 1/5th share and ancillary reliefs of cancellation of sale deed, perpetual injunction and partition and

separate possession. Plaintiffs in regular civil suit no. 72 of 2005 are defendants in that suit.

9. Learned counsel for the petitioner submits that impugned order is absolutely unsustainable. It does not refer to the earlier rejection of application at the behest of respondent no. 4 for getting impleaded and much less the reasons therein.

*Albeit*, he hastens to add that, all these facts could have been pointed out to the court during the course of hearing of application – Exhibit – 105. He further submits that the observations as are appearing in paragraph no. 7 of the impugned order are absolutely irrelevant. In any case, he submits that the order could not have been passed to have respondent no.4 impleaded as plaintiff no.19, as prayed for. The order, according to him, overall depicts non-application of mind and non-appreciation of the facts and legal position. He submits that second application – Exhibit - 105 has not at all been maintainable.

10. Learned counsel Mr. Dodya appearing for respondent no. 4 purports to support the order, submitting that under the garb of permanent injunction sought against the defendants, his possession is being sought to be disturbed and respondent no. 4 is

in possession of the suit property. He submits that earlier, order passed on application exhibit 30 dated 15-11-2005 would not be an impediment for filing application – Exhibit - 105. He submits that such an application can be entertained by the court and the court has absolute discretion under order I, rule 10 of the code of civil procedure, to consider the same. He submits that for the reasons assigned, the discretion has been exercised in favour of respondent no.4 finding that respondent no.4 is a necessary party. The discretion is not liable to be dabbled with under present writ petition.

11. Although, respondent no. 4 has submitted so, he appears to have been mainly concerned under an apprehension that his possession is likely to be disturbed by injunction order in the present petition.

12. It may not be restated that injunction operates in *personam*. Apart from that, it appears that suit at the behest of respondent no.4 is pending since 1996, wherein, it appears that some of the plaintiffs are parties as defendants.

13. Considering claimed rights to the property, asserted possession, the events, the concern and apprehension as referred to in the application, it appears that respondent no.4 may have to

take up appropriate proceedings before appropriate forum and it would not be within the ambit of present suit filed by present plaintiffs.

14. A third person seeking to get impleaded in the suit, would not be able to foist himself in the suit to be plaintiff along with plaintiffs filing suit while, his interest appears to be adverse to them. It appears that the prayers have been ignored by the learned judge while passing the impugned order. In the given facts and circumstances, application - Exhibit - 105 could not have been allowed. As such, the writ petition is allowed.

15. Impugned order - exhibit 105 dated 04-08-2012 passed in regular civil suit no. 72 of 2005 by 2nd joint civil judge senior division, Nanded is set aside without undermining the remedies for claimed rights of present respondent no.4.

16. Rule made absolute accordingly.

[SUNIL P. DESHMUKH]  
JUDGE

arp/

Anil  
Rameshrao  
Pundlik

Digitally signed by  
Anil Rameshrao  
Pundlik  
Date: 2018.08.28  
14:28:57 +0530