

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

WRIT PETITION NO. 2445 OF 2018

Digambar s/o Gangaram Halde (Patil),
Age 59 years, Occu.: Agriculture,
R/o.: Behind D.S.P. Office, Vazirabad,
Nanded, Taluka and District: Nanded.

... PETITIONER
(Orgi. Applicant / third party)

VERSUS

- 1] Sayyad Khaja s/o Sayyad Mohiyoddin,
Age: 58 years, Occu.: Business,
R/o: Khadakpura, Nanded,
Taluka and District : Nanded.
- 2] The State of Maharashtra,
through the District Collector,
Nanded.
- 3] The Tahasildar,
Tahasil Office, Nanded,
Taluka and District : Nanded.
- 4] The Deputy Superintendent of
Land Records, Collector Office,
Nanded, Taluka and District:
Nanded.
- 5] The Superintendent of Land Records,
Visawa Nagar, Nanded,
Taluka and District : Nanded.

... RESPONDENTS
(No.1 – Original Plaintiff
and Nos.2 to 5 Orig.
Defendants No.1 to 4)

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Mr. Rajendra S. Deshmukh, Advocate for the Petitioner.

Mr. Amit Mukhedkar, Advocate for Respondent No.1.

Mr. S. K. Tambe, AGP for Respondent Nos.2 to 5.

...

CORAM : **V. L. ACHLIYA, J.**

DATE : 16th April, 2018.

ORAL JUDGMENT:

. Rule. Rule made returnable forthwith. By consent of the learned counsel appearing for the parties, the petition is heard finally at the stage of admission.

2 By this petition filed under Article 227 of the Constitution of India, the Petitioner, the intervenor – third party has challenged the order dated 19th September, 2015 passed below Exhibit 12 and the order dated 13th April, 2017 passed below Exhibit 22 in Regular Civil Suit No.130 of 2014 by 2nd Joint Civil Judge Senior Division, Nanded. By the impugned orders, the applications moved by the Petitioner under Order 1 Rule 10 (2) of the Code of Civil Procedure to join Petitioner as a party-Defendant to suit came to be rejected by the trial Court.

3 Heard the learned counsel appearing for the parties and perused the impugned order.

4 In view of the limited challenge raised in the petition, it is not necessary to discuss the facts of the case in detail. Respondent No.1 / Plaintiff has filed Regular Civil Suit No.130 of 2014 seeking mandatory injunction as against Respondent No.5 i.e. original Defendant No.3 in suit seeking decree to direct Defendant No.3 to measure the land Gat No.37/A to the extent of 55 Ares situated at Vazirabad, District Nanded. The relief claimed in suit reads as under:

“That, the suit of the plaintiff may kindly be decreed with cost, & Mandatory Injunction may kindly be issued against the defendant No.3 directing him to measured the land by demarcating, fix & apex the boundaries of land Gut No. 37/A to extent of 55 R situated at Vazirabad Nanded bounded as to; East : Land of Yakub Shaha, West : Naleshwar Road, South : Remaining portion of land Gut No.37 / A Sayyad Ahenad Pasha, North : remaining portion of Gut No.37 / A now constructed Municipal Road Situated at Vazirabad, Nanded & oblige.”

5 Respondent No.1 / Plaintiff in suit has approached with a

case that the suit land was originally owned by deceased (Gangaram Halde), the father of the Petitioner. Out of land admeasuring 4 Hectare 28 Ares, the Respondent No.1 has purchased 55 Ares of land in the year 1995. During the lifetime of deceased Gangaram, he has sold the entire land. The Petitioner is neither owner nor in possession of any part of said land. By taking disadvantage of certain revenue entries standing in the name of Petitioner, the Petitioner tried to harass and dispossess him. Thereafter, the Respondent No.1 required to file civil suit for prohibitory injunction, which is registered as Regular Civil Suit No.882 of 2012 and pending for adjudication. On account of dispute raised as to the boundaries of the land owned by Respondent No.1, the Petitioner approached to Respondent No.5 to measure the land and fix the boundaries. However, Respondent No.5 failed to measure the land. Therefore, the Plaintiff has filed suit claiming aforesaid relief as against Respondent No.5 / Defendant No.3.

6 Mr. Deshmukh, learned counsel for the Petitioner submitted that trial Court has rejected the application for the reason that earlier application filed seeking similar relief was rejected in default of Petitioner and unless that order is set aside, the Court

cannot entertain the application. By referring the facts pleaded in the plaint, the learned counsel submits that the Petitioner is a necessary party to the suit and the trial Court has wrongly refused to exercise the jurisdiction vested in it.

7 On the other hand, the learned counsel representing the Respondent No.1 supported the order passed by trial Court and submits that respondent No.1 being Plaintiff cannot be forced to defend against the party, with whom the Plaintiff do not want to prosecute. He submits that the Petitioner is neither necessary nor the proper party to the suit. He submits that reliefs claimed in suit is exclusively claimed as against Respondent No.5. While measuring the land, the respondent No.5 may issue notice to all concerned.

8 On due consideration of submissions advanced in the light of the facts pleaded in the plaint, I am of the view that the application moved by the Petitioner to join him as a party defendant to the suit deserves consideration by the trial Court. The contention of Plaintiff – Respondent that no relief is claimed against the Petitioner in the suit filed, itself not sufficient to turn down the request of the Petitioner. Order I Rule 10(2) of the Code of Civil Procedure reads as

under:

“(2) **Court may strike out or add parties.**— The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.”

9 Normally, the party is not added against the wishes of Plaintiff, still the jurisdiction of the Court is not barred to invoke powers under Order I Rule 10(2) of the Code of Civil Procedure either on its own motion or on the application made by any person to pass order to join such person as a plaintiff or defendant as the case may be, whose presence before the Court, the Court may found necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit. Thus, the basic purpose of exercise of powers under Order I Rule 10(2) of the Code of Civil Procedure is to avoid multiplicity of proceedings and to effectively

decide the dispute between the parties. The person to be added as defendant may not be necessary party, but for adjudication of suit, if the Court deems it fit that for proper adjudication, the person needs to be join as a party defendant to the suit then the Court can exercise such powers under Order I Rule 10(2) of the Code of Civil Procedure.

10 In the present case, though the Respondent – Plaintiff claims that the relief claimed in the suit is only against Respondent No.3, but if we look into the allegations made in the plaint then the cause of action for filing suit itself attributed to act and action on the part of Petitioner.

11 Since the trial Court has not decided the application on merit, it is not desirable to make any observations as regards the merit of the application moved by the Petitioner. Since the earlier application filed by the Petitioner was dismissed in default, the subsequent application can be entertained by the trial Court. In the facts and circumstances of the case, it is necessary to set aside the impugned orders and remand the matter to decide the application Exhibit 12 afresh on its own merit. In the result, the impugned orders are set aside. The trial Court is directed to hear the application

Exhibit 12 afresh after giving opportunity of hearing to both sides. Needless to observe that the application be decided on merit without taking into consideration the previous application rejected in default of the Petitioner.

12 The parties are directed to appear before the trial Court on 11th June, 2018 at 11:00 am. On appearance of the parties, the trial Court is directed to fix the date convenient for the Court to hear the parties and decide the application Exhibit 12.

13 It is clarified that the observations made above are made for the limited purpose of deciding the present writ petition and same shall not be construed as observations made as to the merit of the application moved by the Petitioner. The application shall be decided on its own merit and in accordance with law.

14 Rule made absolute in above terms.

[V. L. ACHLIYA, J.]