

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1177 OF 2017

DIPAK BABULAL ZAWAR
VERSUS
PURUSHOTTAM TOPANDAS KATARIYA AND OTHERS

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Advocate for Petitioner : Shri Patil Vijay B.
Advocate for Respondent 1 : Shri Mewara Rajesh H.
Advocate for Respondents 2 & 3 : Shri Patil Pradip R.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: December 05, 2018

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PER COURT :-

1. I have heard the learned Advocates for the respective sides at length.

2. The petitioner is the third party / applicant, who has preferred an application Exhibit 117 in RCS No.84 of 2009 praying for his addition as defendant No.3 under Order I Rule 10 and Section 151 of the Code of Civil Procedure ("CPC"). Contention is that as the intervenor has purchased 120.2 sq. meters of the land on the Western side of plot No.137 from the earlier owner on 11.6.2011, he has a right to be heard in the pending suit. The trial Court has rejected Exhibit 117 on the ground that if the third party is impleaded in the suit, the dispute between the plaintiff and the third party will have to be entertained by the Court and this will delay the matter and deviate from the main issue

involved in this case. It is also noted that if the intervenor has any grievance against the plaintiff, he should file a separate suit against him.

3. It is undisputed that the plaintiff has been issued with a notice for demolition of a structure that he has erected on the final plot No.137. The said notice dated 15.4.2009 is challenged in the pending suit. The multi-fold defence taken by the plaintiff is that, firstly, he has perfected his title over the concerned portion by adverse possession and secondly, he has become the absolute owner since he is occupying that portion from 1958 and has erected a structure.

4. The petitioner has contended that the said land admeasuring 120.2 sq. meters out of the total land of 250.2 sq. meters, has been purchased by him. His portion of the land is on the Western side of the final plot No.137. Admittedly, the structure erected by the plaintiff is positioned in the said portion, which the petitioner claims to have purchased. On these premises, the petitioner moved the application for being impleaded as a defendant, contending that the plaintiff is likely to acquire a decree from the trial Court that he is the owner of the portion occupied by him and has legally erected the shop. If such a declaration is granted, the petitioner will have to file a separate suit seeking a declaration of ownership over the same portion and seek a further declaration that the decree of the trial Court in the pending suit is not

binding upon him. In order to avoid multiplicity of litigation, he has filed the intervention application.

5. Pursuant to the direction dated 4.12.2018, learned Advocate for the petitioner submits, on instructions from the petitioner who is present in the Court, that he would not develop the said property until the civil suit is disposed off, provided he is granted the opportunity to contest the said suit.

6. Respondent No.1 places reliance upon the judgment of this Court in the matter of Shayam Fatechand Shende Vs. Alka Vinod Ganvir [1998 (1) All M.R. 73], in which, the intervenors prayed for intervention to indicate that the structure of the plaintiff is illegal. They were not connected with the suit property and did not claim any right, title or interest. Hence, this Court refused permission for intervention.

7. The plaintiff then relies upon the judgment of the Orissa High Court in the matter of Lingaraja Mohanty Vs. Vrs - Writ Petition (C) No.16053 of 2010, decided on 20.4.2011, wherein, the Orissa High Court has concluded that a *lis pendence* transferee has a substantive interest over the property transferred in his favour and he has the obligation to protect such interest being the representative in interest of the transferor. It was also concluded under Order XXII Rule 10 of the

CPC that if the *lis pendence* transferee opts not to implead himself, he shall be bound by the decree that may be passed against the assignee.

8. Considering the above it is quite obvious that the plaintiff is resisting the demolition notice on the ground that he has perfected his title by adverse possession and hence the structure erected by him is legal. While doing so, he has not impleaded the earlier landlord. Moreover, the earlier landlord may have lost interest since he has sold the property, received consideration and it is no longer his obligation to protect the property. In this backdrop, if the subsequent owner, who is *lis pendence* purchaser, opts for protecting his interest and his property, which otherwise would suffer a decree without his participation, I find that in such circumstances, such an intervenor needs to be allowed to intervene in the matter.

9. I find from the impugned order that the trial Court has superficially considered Exhibit 117 and has rejected the same for the reason that the participation of the intervenor would delay the suit.

10. In view of the above, this petition is allowed. The impugned order dated 5.11.2016 is quashed and set aside. Application Exhibit 117 is allowed. The plaintiff shall forthwith array the petitioner as defendant No.3. The trial Court need not issue a formal notice since the petitioner

agrees to appear in the pending suit on 17.12.2018. He shall file his written statement on/or before 5.1.2019. The trial Court shall, thereafter, recast the issues, if already framed / cast, after considering the contention of the added defendant.

11. Since the suit is lodged in 2009, all the parties shall extend their fullest cooperation to the trial Court, which shall decide the suit on/or before 30.9.2019.

(RAVINDRA V. GHUGE, J.)

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