

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1429 OF 2018

NASEER MAHEBOOBSAB QURESHI
VERSUS
HABIB KHURSHID SHAIKH AND OTHERS

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Advocate for Petitioner : Ms. Salunke S.V. h/f Shri Salunke V.D.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: February 07, 2018

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PER COURT :-

1. The petitioner / plaintiff is aggrieved by the order dated 20.11.2017, by which, the trial Court has allowed application Exhibit 11 filed by the third party under Order I Rule 10 of the CPC permitting him to be added as a defendant in Special Civil Suit No.34 of 2016.

2. Learned counsel for the plaintiff has strenuously criticized the impugned order contending that the suit property is a land admeasuring 20'x20' purchased by the plaintiff by sale deed No. 649/2014 and 20'x20' by Sale deed No.662/2014. Both these portions of land are in S. No.191/B, CTS No.2036. The applicant / third party claims to have a right in land admeasuring 30'x30' in S.No.88.

3. Grievance of the petitioner is that the land of the third party is in a different Survey Number and the suit property is in an unconnected Survey Number. The third party has no relationship with the suit property and the trial Court has erroneously added him as the defendant.

4. I find from the application Exhibit 11, filed by the third party that he has alleged that the plaintiff has given incorrect description of the suit property. Considering the description, the property owned by the third party would be a subject matter of the suit. Because of the incorrect description, the property of the third party is included as the suit property and the suit would proceed in the absence of the third party. It is further averred that the plaintiff and the defendants are hands in gloves and would seek a collusive decree and divest the third party of his property.

5. The trial Court has concluded that since the third party claimed that his property is entangled into the suit property on account of the incorrect description of the boundaries, the third party might lose his property if he is not arrayed as a defendant.

6. I am of the view that the worst that would happen by adding

the third party in the suit is that the trial Court may eventually conclude that his property is not included in the suit property. However, if he is not added as a defendant and if the trial Court decrees the suit, by which, the property of the third party happens to be a part of the suit property, he might lose the said property without being heard.

7. In the above circumstances, the trial Court has concluded that no loss would be caused to the plaintiff if the third party is added since it would assist the trial Court in the proper adjudication of the suit and there would not be any decree against a party without hearing him. I find that the trial Court has taken a pragmatic view in order to avoid multiplicity of litigation, since the third party, if is left out and factually his property happens to be a part of the suit property, a new round of litigation would commence and he would contend that the decree is not binding upon him since he was not a party to the suit.

8. In the above backdrop, the impugned order cannot be termed as being perverse or erroneous. Eventually, if it turns out that the third party was an unnecessary party to the proceedings, the plaintiff would be at liberty to seek costs or consequential reliefs against such a third party.

9. This petition being devoid of merits is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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