

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.12104 OF 2017

Shamshoddin Mahmads Pirjade

Since deceased by Lrs. and ors. ... Petitioners

Vs.

Smt. Nirmala Narendra Majati and ors. ... Respondents

Mr.Tejpall S. Ingale with Mr.Nikhil Pawar for the Petitioners.

None for the Respondents.

CORAM : M.S.SONAK, J.

DATE : APRIL 20, 2018.

P.C. :

1. Heard Mr.Tejpall S. Ingale for the Petitioners.
2. The challenge in this Petition is to the order dated 17th August 2017, by which the learned Trial Judge has permitted the Respondents (original plaintiffs) in the suit to implead a third party as an additional party.
3. Mr.Ingale, learned counsel for the Petitioners, who are the original defendants in the suit submits that this is a suit for specific performance and therefore, the third party who has been permitted to be impleaded as a co-defendant is neither a necessary nor a proper party. He submits that merely because

third party published some advertisement in the newspaper, claiming some rights in the suit property, the learned Trial Judge was not justified ordering the impleadment of third party. Mr. Tejpal Ingale submits the learned Trial Judge has not correctly appreciated the provisions of Order I Rule 10 of the Code of Civil Procedure 1908, and the impugned order is exercised in excess of jurisdiction. For all these reasons, Mr. Ingale submits that impugned order may be set aside.

4. In this case, the Respondents i.e. the original plaintiffs in the suit applied for impleadment of one Lailunissa Patel as a co-defendant to the suit. The settled position in law is that the plaintiff is the "*dominus litus*" and therefore, it cannot be said that the exercise of discretion by the learned Trial Judge is either unreasonable or constitutes an exercise in excess of jurisdiction. The plaintiffs in their application, has stated that Lailunissa by issuing an advertisement in the newspaper has sought to claim certain rights in respect of the suit property. In order that there is no multiplicity of proceedings and so that all issues which arise in the suit can be decided in the same suit, the application seeking impleadment came to be made. Learned Trial Judge has

considered the application and opined that for proper adjudication of the suit the party now ordered to be impleaded would be a necessary party.

5. As noted earlier the exercise of discretion by the learned Trial Judge is not unreasonable or perverse so as to warrant interference in the exercise of extra ordinary jurisdiction.

6. Again it cannot be said that any serious prejudice has been occasioned to the Petitioners-original defendants merely because the Respondents-original plaintiffs are granted leave to implead an additional party. On the basis of material on record, it cannot be said that the added party is not a proper party to the suit.

7. For all the aforesaid reasons, this petition is to be dismissed. There is not order as to costs.

(M.S.SONAK, J.)

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