

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1761 OF 2013

Gajpanth Siddhakshetra

... Petitioner

v/s

Shri Digambar Jain Tirthkshetra

Gajpanth, Mhasrul Trust.

... Respondents

Mr K.P. Mali for Petitioner.

Mr Sachin Gite for Respondent Nos.1 to 3.

Ms Kavita Solunke, AGP for Respondent No.4.

CORAM : B.P. COLABAWALLA J.

DATE : 28TH NOVEMBER, 2018.

P.C. :-

1. This Petition has been filed seeking to challenge the order passed by the Trial Court dated 3rd December 2012 on an application made by the Respondent for joining them as party Defendants under Order 1 Rule 10 of C.P.C. The Trial Court, after considering the application as well as opposition thereto by the Plaintiff, allowed the application. It is in these circumstances that the present Petition has been filed.

2. The learned counsel appearing on behalf of the Petitioner submitted that the present Suit has been filed by the Plaintiff against the Collector, Nasik, Deputy Conservator of Forest, Nasik Division, Nasik and Sub-Engineer, MSEB for seeking a declaration that the show cause notice dated 6th April 2009 issued by the Defendant No.3 (Sub-Engineer, MSEB) is bad-in-law and ought to be set aside. The other prayer that is sought for is not to disconnect the electricity connection given to the Plaintiff. He submitted that the Suit has a very limited scope and therefore the Respondent herein has no role to play in the Suit and is not a necessary or proper party. He submitted therefore that the Trial Court has completely gone wrong in allowing the application of the Respondent by directing it to be joined as Defendant No.4 to the Suit.

3. At least, *prima facie*, I am unable to agree with the submission made on behalf of the Petitioner. The newly added Defendant viz. Defendant No.4 is claiming to be in occupation of the suit property. Issues have also been framed by the Trial Court and the first issue is whether the Plaintiff has acquired any right in the suit property for use and occupation of the suit property for religious purposes. *Prima facie* therefore, I do not think that any interference is called for in the impugned order under Article 227 of the Constitution of India. In any event, if for any reason, the Suit is

dismissed or any adverse findings are given in the final decree that is passed, this order can always be challenged along with the final decree that may be passed in the Suit as per section 105 of the C.P.C.

4. This being the case, I do not see any reason to entertain this Petition. It is accordingly dismissed. However, there shall be no order as to costs.

(B.P. COLABAWALLA J.)