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

WRIT PETITION NO. 3651 OF 2017

Suresh Tulshiram Bhagwat ... Petitioner
V/s.
Khashaba Dhondiba
Thombare and ors ... Respondents

Mr. Vaibhav V. Ugle, for the Petitioner.
Mr. Rishikesh C. Barge, for the Respondent No.1.
Mr. A.R.Metkari, AGP for respondent Nos.3 & 7.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 16th MARCH, 2018.

P.C. :

1] Heard learned counsel for the petitioner, learned counsel for respondents and learned AGP for the State.

2] By this petition filed under Article 227 of the Constitution of India, the petitioner is challenging the order dated 30th January, 2017, passed by the Joint Civil Judge Junior Division, Dahiwadi, below the Application at Exh.31 in R.C.S.No.56 of 2016.

3] Application at Exh.31 was filed by the third party i.e. respondent No.1 herein, for his impleadment in the suit as defendant. The instant suit was filed by the present petitioner against the Chief Executive Officer, Zilla Parishad, Satara, Sub Divisional Engineer,

Zilla Parishad, Block Envelopment Officer, Panchayat Samiti, Man, Sarpanch, Gram Panchayat, Shingnapur, and the Circle Officer, Gram Panchayat, Shingnapur, contending inter alia that he is the owner of the suit property as described in paragraph 1 of the plaint. He is conducting hotel business therein since the year 1980, and has, thus, challenged the notice issued under Section 52, 53 and 54 of the Village Panchayat Act, claiming the relief of declaration and injunction restraining defendants from taking any action against his hotel in pursuance of the said notice.

4] While the suit was pending in the trial Court, Respondent No.1, the third party, has filed application before the trial Court for his impleadment in the suit, on the ground that action of removing such encroachment on the public place has been initiated by Gram Panchayat at his instance. He has also filed Public Interest Litigation in this Court, for removal of such encroachment. It was stated by him that being the member of the public and encroachment being made on the public property, he is very much interested in the outcome of the suit. Moreover, as the Gram Panchayat and the other Government authorities are not taking requisite action despite the said fact being brought to their notice, it was necessary to implead him in the suit so that his impleadment will assist the Court in deciding the dispute completely and effectively.

5] This application came to be resisted by the present petitioner, contending inter alia that by his impleadment, respondent No.1 is seeking to expand the scope of the litigation. Moreover, the Petitioner being the dominus litus, he has right to decide which party is necessary or proper party to the suit and he cannot be compelled to implead some third person like respondent No.1, who has filed this application to extract money from the petitioner. It is urged that defendant – Government authorities are competent to take whatever action is required to be taken against the petitioner for removal of alleged encroachment. Respondent No.1, is therefore, neither the proper nor the necessary party to the decision of the suit and hence this application should be dismissed.

6] The trial Court, has, however, vide its order, allowed the application holding that as in the present case, there is allegation of encroachment on public road and hence the petitioner being a member of the public, is having interest in the dispute; his impleadment will also assist the Court to decide the dispute.

7] However, as rightly submitted by learned counsel for the petitioner, impleadment of respondent No.1 in the instant suit is not at all warranted. The petitioner has filed the suit simplicitor for the injunction challenging the notice issued by the Gram Panchayat, under Section 52, 53 and 54 of the Village Panchayat Act. It is the

Village Panchayat alone, which is competent to take requisite action under the said Act for removal of encroachment, if any, made by the petitioner. It may be true that at the instance of petitioner, the Gram Panchayat had taken the initiative for such removal, but once it has taken the action and is following the due process of law for removal of such encroachment, then the impleadment of respondent No.1, in the suit is totally unwarranted. It is not only going to expand the scope of suit, but also un-necessarily embarrass the petitioner in his case. As held by the Apex Court in the case of *Ramesh Hirachand Kundanmal -vs-Municipal Corporation of Greater Bombay and ors* [(1992) 2 SCC 524;

“the object of Order 1 Rule 10(2) cannot be said to prevent multiplicity of actions, though it may incidentally have that effect. But that appears to be a desirable consequence of the rule rather than its main objective. The person to be joined must be the one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some questions involved and has thought of relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is that he should be bound by the result of the action and the

question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that the person must be directly or legally interested in the action in the answer i.e. he can say that the litigation may lead to a result which will affect him legally, that is by curtailing his legal rights. It is difficult to say that the rule contemplates joining as a defendant a person whose only object is to prosecute his own cause of action”.

8] In the facts of said suit also, when the action was taken under the Municipal Corporation Act, for removal of unauthorized construction, the person interested in removal of said structure, had sought his impleadment and it was held that impleadment of such person is not necessary. Conversely, it will unnecessarily expand the scope of the litigation and further embarrass the plaintiff in his suit. It was held that after all the plaintiff is dominus litus, he can choose the person whom he should make party; he cannot be compelled to implead a person against whom he does not seek any relief. Secondly, the person who is not a party, has no right to be impleaded against the wishes of the plaintiff. Of course this is a general rule, subject to the provision of Order 1 Rule 10(2) of C.P.C. by which the Court is given

discretion to add as party any person, who is found to be necessary or proper party.

9] Herein in the case, in no way respondent No.1 can be considered as proper party, far remain, as necessary party. His impleadment would only complicate and delay the trial and will call upon the Court to take upon adjudication of such issues, as are not germane to the trial of the suit. Moreover, being a member of the public, he has already filed Public Interest Litigation in this Court for removal of general encroachment surrounding the temple in the village. The said P.I.L. is still pending. He can agitate all his grievances therein, but so far present suit is concerned, this suit is limited to the extent of the notices issued by the respondent Gram Panchayat and Gram Panchayat is competent to remove the encroachment. At the most presence of respondent No.1, as observed in the case of *Ramesh Hirachand Kundanmal -vs Municipal Corporation of Greater Bombay and anr (supra)* will be necessary to adduce certain evidence and he can do so as witness. But to implead him in a suit, he must show some direct and legal interest. Merely being a member of public cannot be said to be having such direct and legal interest. If his impleadment is to be accepted, then on this analogy entire village will be required to be joined in the instant suit.

10] In view thereof, the trial Court has committed an error in

allowing the impleadment of respondent No.1 in the suit. The impugned order, therefore, passed by the trial Court, needs to be quashed and set aside.

11] Hence the Writ Petition is allowed.

12] The impugned order passed below Exh.31 in R.C.S.No.56 of 2016 is hereby quashed and set aside.

[DR.SHALINI PHANSALKAR-JOSHI, J.]