

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5661 OF 2015

Mr. Shakil Ahmed Gulam Rasool Momin ..Petitioner

Vs.

Mr. Fahad Talib Bubere and Another ..Respondents

Mr. Vijay V. Nene, for the Petitioner.

None for the Respondents.

CORAM :- **B.P.COLABAWALLA, J.**

DATE :- **DECEMBER 7, 2018.**

P. C.:

This Writ Petition challenges the order passed by the Trial Court dated 16th September, 2014 passed below Exhibit-95 in Regular Civil Suit No. 913 of 2012.

2 Exhibit-95 was an application filed by the Petitioner herein under Order 1 Rule 10 of the Code of Civil Procedure, 1908 to be added as party Defendant to the suit. It is the case of the Petitioner that he was a necessary party to the Suit that was filed by the Original Plaintiff against Bhiwandi Nizampur City Municipal Corporation (Respondent No.2 herein). Since the Original Plaintiff has started construction over the Petitioner's

land and encroached upon it to the extent of 304 square yards and considering that Respondent No.2 had given a notice under Section 264 of the Maharashtra Municipal Corporation Act to the original Plaintiff, the Petitioner's contention was that his presence was necessary in the Suit filed challenging the Notice under Section 264 of the MMC Act.

3 After hearing the Petitioner, the Trial Court dismissed Exhibit-95. The reasoning given by the Trial Court was that the Suit filed by the Plaintiff against Bhiwandi Nizampur City Municipal Corporation was for an injunction restraining the Corporation from demolishing the Suit premises. In these disputes, the Petitioner herein had absolutely no *lis*. The Trial Court also took note of the fact that the Petitioner himself had filed Regular Civil Suit No. 925 of 2012 for removal of the alleged encroachments that were carried out by Respondent No.1 herein (Original Plaintiff in Regular Civil Suit No. 913 of 2012) and for an injunction. That Suit was still pending. It is for these reasons that Exhibit-95 was rejected by the Trial Court.

4 On going through the order passed by the Trial Court, I

find that the Trial Court was correct in coming to the conclusion that the Petitioner was neither a necessary nor a proper party to the Suit filed by Respondent No.1 herein against Respondent No.2 herein. In that Suit, the only relief sought for by Respondent No.1 is against Respondent No.2 restraining them from demolishing his premises. This being the case, the Petitioner herein is neither a necessary nor a proper party to the said Suit. In fact, as recorded by the Trial Court, the Petitioner has already availed of his substantive rights by filing his own Suit being Regular Civil Suit No. 925 of 2012 against the Respondents herein for removing the alleged encroachments done by Respondent No.1 on the property of the Petitioner. This Suit is still pending.

5 In these circumstances, I do not think that the order of the Trial court suffers from any perversity or is vitiated by any error apparent on the face of the record requiring my interference under Article 227 of the Constitution of India. This being the case, I find no merit in this Writ Petition. It is accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

(B. P. COLABAWALLA, J.)