

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10725 OF 2018

Mr. Lalchand N. Yadav .. Petitioner
vs.
Sultan R. Mirza .. Respondent

Mr. Mehul Thakker for the Petitioner.

CORAM : M. S. SONAK, J.
DATE : 4 DECEMBER 2018.

P.C. :-

- 1] Heard Mr. Mehul Thakker, learned counsel for the petitioner.
- 2] The challenge in this petition is to the order dated 14th June 2018 by which the petitioner's application seeking his joinder as defendant No.3 in R.A.E.& R. Suit No. 511 of 2014 pending before the Small Causes Court at Bombay came to be dismissed.
- 3] The learned counsel for the petitioner submits that the petitioner who sought for intervention/impleadment in the suit is in fact, the owner of the suit premises. He submits that there are registered documents which establish that the petitioner is the owner of the suit premises. He submits that the plaintiffs to the suit are not the owners/landlords and so also the defendants to the suit are not the tenants or even the occupants of the suit premises. He

submits that the petitioner is in occupation of the suit premises. For all these reasons, Mr. Thakker submits that the petitioner is a necessary party without whose presence the suit cannot be disposed of. He therefore, submits that by invoking the provisions of Order 1 Rule 10 of CPC., the petitioner ought to have been joined as defendant N.3 in the suit. He submits that the impugned order which dismisses such a prayer of the petitioner is clearly in excess of jurisdiction and therefore, must be set aside.

4] At the outset, it is necessary to note that the petitioner has impleaded only Sultan R. Mirza, the original plaintiff No.2 as respondent to this petition. The learned counsel for the petitioner explains that this is because Mrs. Bismillah R. Mirza, the plaintiff No.1 had already expired. Assuming that such explanation can be accepted, there is absolutely no explanation as to why the two defendants to the suit have not at all been impleaded as the respondents in this petition. However, this is not the only ground on which this petition warrants dismissal.

5] R.A.E.& R.Suit No.511 of 2014 was instituted by Mrs. Bismillah Mirza and Sultan Mirza claiming to be the landlords of the

suit premises. There is a difference between the claim of being a landlord and the claim of the ownership. In a given case, it is possible that the landlord is not the absolute owner of the suit premises. Be that as it may, the claim in the suit is that the Mirzas are the landlords of the suit premises and the defendants Sitaram Dukhi and Smt. Shaymadevi Chavan are the tenants.

6] In a suit of the aforesaid nature, the issue as to whether the plaintiffs are at all the owners of the suit premises and whether the defendants to the suit are at all the tenants in the suit premises, is ordinarily, not required to be gone into at the instance of the 3rd party who claims to be the owner and occupation of the suit premises. This is because whatever decree that may be passed in the suit for eviction will not really affect any right, title or interests, if any, held by the petitioner in the suit premises.

7] The impleadment of the petitioner will completely frustrate the proceedings in the suit, since, the Court would be then called upon to go into the issues of the petitioner's title, which issues are quite alien to a suit of the present nature. The petitioner, is therefore, neither a necessary nor a proper party to the suit in

question.

8] Needless to add that in decree in such a suit will not, affect the alleged rights, titles and interests which the petitioner claims in respect of the suit premises. The petitioner no doubt may be entitled to initiate fresh and independent proceedings to assert his rights, if any, in regard to the suit premises. However, it is clear that the petitioner is neither a necessary nor a proper party to the present suit.

9] In fact, the presence of the petitioner and the issues which he proposes to raise will completely embarrass the proceedings in the present suit. An issue might also arise as to whether the Small Causes Court has jurisdiction to entertain a suit in which one of the parties assert his title to the suit property. For then, the suit no may longer remain a suit between a landlord and a tenant, but may become a suit to establish title.

10] For all the aforesaid reasons, it is difficult to find any error much less jurisdictional error in the impugned order. Accordingly, this petition is liable to be dismissed and is hereby dismissed. The interim order granted earlier is hereby vacated. There shall be no order as to costs.

(M. S. SONAK, J.)