

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2460 OF 2018

MURTAZA HUSAIN ABDUL TAYYAB AMBAWALA
VERSUS
MUNICIPAL CORPORATION AND OTHERS

Advocate for Petitioner : Mr. R.R. Mantri.
Advocate for Respondent Nos. 1 & 2 : Mr. R.S. Banik
h/f. Mr. V.P. Latange.
Advocate for Respondent Nos. 3 : Ms. A.N. Ansari.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 25.03.2019

PER COURT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
2. The petitioner is aggrieved by the order dated 09.02.2018, passed by the Trial Court, vide which application Exhibit 28 filed by the respondent No. 3 herein, seeking addition as a defendant in RCS No. 02/2018, has been allowed.
3. The issue before the Trial Court is with regard to a license, for selling Sugarcane Juice, which was earlier granted to the petitioner. It has been stayed by the Corporation, in view of a complaint lodged by the respondent No. 3, creating a picture before the Municipal Corporation that the property on which the Sugarcane Juice Shop is

situated, is a disputed property.

4. Special Civil Suit No. 631/2008 was earlier filed by Durrashwar Begum W/o. Mubashir Hussain against Abdul Tayyab S/o. Mulla Mumtaz Hussain. The plaintiffs are the legal heirs of deceased Mubashhir Hussain. The petitioner appeared as defendant No. 1-A, being the son of deceased defendant No. 1 Abdul Tayyab. The said suit was for partition, separate possession and declaration. By judgment dated 13.01.2014, the said suit was dismissed. The proceedings reached up to this Court in First Appeal No. 1161/2014. By an ad-interim order dated 30.04.2015, the learned Division Bench of this Court directed the parties, who are in possession of particular shares of the property, not to create third party interest in respect of those properties. Any development on the said property was at the risk of the concerned party and was made subject to the out come of the Appeal and further orders that would be passed in the First Appeal. It is not disputed that the First Appeal was withdrawn by the original plaintiffs as another Special Civil Suit No. 15/2018 was pending. The said suit is filed by the daughters of the sisters of deceased Tajjimmul Hussain. The petitioner and respondent No. 3 are the defendants in the said suit.

5. The petitioner herein preferred RCS No. 02/2018, for

challenging the order dated 30.12.2017, passed by the Additional Commissioner, Municipal Corporation, Aurangabad, staying the Municipal license allotted to the petitioner for operating his Sugarcane Juice shop. It is not in dispute that in this suit, the rights of the petitioner or any of the relatives, are not being decided since it is a suit purely for challenging the staying of the license already granted. Respondent No. 3 herein preferred Exhibit 28, stating that it was because of his complaint that the license already granted to the present petitioner was stayed. He, therefore, prayed for being arrayed as a defendant in the said suit.

6. Learned advocate for respondent No. 3 does not dispute that the property at issue in these proceedings is in possession of the petitioner. It is also not disputed that he was granted the Municipal license for operating a Sugarcane Juice Shop. It is also admitted that respondent No. 3 has not applied for seeking such a license with reference to the same property Plot No. 7 in City Survey No. 16039.

7. The law has been crystallized on this count, in so far as the addition of parties is concerned. It has been settled in the cases of Pankajbhai Rameshbhai Zalavadia Vs. Jethabhai Kalabhai Zalavadiya, [AIR 2018 SC 490], Vidur Impex and Traders Private Limited and others Vs. Tosh Apartments Private Limited and

others, [(2012) 8 SCC 384], Foolchand Nanhelal Parwar Vs. Shabbir Hussain S/o. Mulla Akbar Ali Bohra and another, [1998 (1) Mh.L.J. 429] and Kanaklata Das and others Vs. Naba Kumar Das and others, [(2018) 2 SCC 352], that a suit cannot be decided in the absence of a necessary party. Unless a party seeking addition to the suit could indicate that the issue being adjudicated upon would materially affect his rights, such addition is not necessary.

8. In Special Civil Suit No. 15/2018, all the relatives of the petitioner and respondent No. 3 are litigating for partition, separate possession and declaration of ownership. Plot No. 7 at issue is also a property included in the common hotchpotch in the said suit. Whether the said plot would come to the share of the petitioner or whether it would go to the share of respondent No. 3, is yet to be decided.

9. In RCS No. 02/2018, the petitioner alone is litigating in so far as the license to operate the Sugarcane Juice shop is concerned. Whether the Corporation has rightly stayed the license, is the subject matter to be decided by the Trial Court. Rights of the petitioner or respondent No. 3 are not being decided and, as such, whatever is the result of the said suit, it would not have any impact on the rival claims of the litigating sides in SCS No. 15/2018.

10. The issue, therefore, is as to what would be the effect of the participation of respondent No. 3, upon being added in the said suit involving the Municipal license. I do not find that respondent No. 3's participation would assist the Trial Court in any manner whatsoever. If the Municipal Corporation does not desire to grant such license to such persons who are in possession of disputed properties, it would be the outlook of the Corporation in proving/establishing its policy in such matters. Whether respondent No. 3 participates or not, would not assist the Court since it is obvious that Plot No. 7 is already a part of the disputed property in Special Suit No. 15/2018.

11. I find that the Trial Court has lost sight of these material aspects. It failed to consider as to what would be the relevance of a third party being added to the pending suit when it is obvious that Plot No. 7 is subject matter of litigation. The learned Division Bench has also ordered on 30.04.2015, that any development of the properties would be at the risk of the party who is in possession of such property. The petitioner makes a statement that, for the present, he is not developing the property, except that he is utilizing the said property as other relatives are utilizing those properties which are in their respective possession. It is also stated that third party interest or encumbrances are also not being created in Plot No. 7.

12. Considering the above, this petition is allowed. The impugned order dated 09.02.2018, passed by the Trial Court is quashed and set aside and application Exhibit 28 stands rejected. Needless to state, RCS No. 02/2018, shall be considered by the Trial Court on its own merits and all contentions of the litigating sides are, therefore, kept open.

(RAVINDRA V. GHUGE, J.)

S.P.C.