

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5194 OF 2019

VITHAL GITARAM GAIKWAD
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Shri Indani U.M.h/f Shri Indani M.S.
AGP for Respondents 1 to 3 : Shri Yadav S.R.
Advocate for Respondent 4 : Shri Choudhari Abhijit
h/f Shri Choudhari D.J.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: July 04, 2019

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PER COURT :-

1. This matter is heard at length on 2.7.2019 and today.
2. The petitioner / plaintiff is aggrieved by the framing of additional issues by the trial Court, by virtue of the order passed *suo moto* on 15.12.2018 in RCS No.223 of 2005, at the stage of advancing final oral submissions.
3. I find a peculiar issue has been raised by the petitioner. It is a short issue.
4. The petitioner / plaintiff had moved an application Exhibit 58, making a request to the trial Court to permit him to add the District

Collector, Beed and the Tahsildar, Georai as defendants. He had based his request in view of the written statement filed by the defendant / Market Committee, that the suit suffers from non-joinder of parties and by considering the subsequent events. The suit could be dismissed for having not added the District Collector and the Tahsildar, Georai as defendants. By a detailed order, dated 20.11.2010, the trial Court rejected the said application and concluded that the said parties are not necessary after recording the objections of the defendants.

5. By an order dated 15.12.2018, passed *suo moto* after eight years and that too at the stage of advancing final arguments, the trial Court has framed additional issues as regards, “Whether the suit is within limitation?” and “Whether the suit is barred for non-joinder of necessary parties?”

6. Learned Advocate for the petitioner submits that either the second additional issue be discarded or he may be allowed to implead the District Collector as well as the Tahsildar as defendants.

7. I find the said submission to be quite appropriate for the reason that when the plaintiff himself was ready to array these parties as defendants in 2010, the defendants had opposed and the

trial Court had rejected application Exhibit 50. As such, if liberty to add the said parties as defendants is granted and which legally cannot be refused to the plaintiff, the second additional issue can be discarded. It is quite surprising that on the one hand, the defendants seek dismissal of the suit for non-joinder of parties and on the other hand, are opposing addition of parties.

8. In view of the above, this petition is partly allowed to the extent of permitting the petitioner to prefer an application for adding the District Collector, Beed and the Tahsildar, Georai as defendants. Such application shall be filed within 15 days. The defendants shall not oppose and the trial Court would pass a formal order forthwith permitting the plaintiff to array the defendants and notices be issued. On these premises, the additional issue No.2, framed on 5.1.2019, would be discarded by the trial Court.

9. The petitioner has also assailed the framing of the issue of limitation. I find from the pleadings that the defendant / Market Committee claims to be in possession of the suit property since 1983. The plaintiff does not plead the exact date on which he was dispossessed. It is pleaded in the plaint that he was dispossessed sometime in 1993. The suit has been filed on 1.9.2005. It is contended that Article 64 would apply and the suit is within

limitation. The defendant's case is that the plaintiff was dispossessed in 1983 and the suit is barred by limitation. Issue of limitation was not framed earlier.

10. In view of the above, this petition is partly dismissed to the extent of framing of the additional issue with regard to limitation.

(RAVINDRA V. GHUGE, J.)

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