

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.7301 OF 2019
WITH
WRIT PETITION NO.7302 OF 2019

CHANDRASHEKHAR LAXMINARAYAN JAISWAL
VERSUS
DILIP SHIVNARAYAN JAISWAL AND OTHERS.

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Shri P.F.Patni, Advocate for the petitioner.
Shri S.S.Bora, Advocate for respondent nos.2 to 5.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 21st June, 2019

Per Court:

1 The petitioner is the same in both these petitions. There are two pending Regular Civil Appeal Nos.164 and 163/2017 with respect to the decrees in Regular Civil Suit Nos.2015/2012 (old Special Civil Suit No.190/2006) and 1365/2012 (old Special Civil Suit No.189/2006).

2 The petitioner is aggrieved by the impugned orders dated 25.03.2019 passed by the first Appellate Court below exhibits 27 and 45 in both the appeals vide which, the applications filed by the petitioner seeking addition as a defendant, have been rejected.

3 Though the hearing in the matter continued upto 6:00 pm, the orders are being dictated in the court as the final arguments in the

regular civil appeals have progressed and the matters have been posted on 24.07.2019 (Monday) for closing the appeals for judgments.

4 Both the suits, which have given rise to the pending appeals, are with regard to eviction of the tenant. The suit properties are two different shops. The plaintiff in the said suits had moved for recovery of possession and mesne profits. After the suits were decreed, the appeals were preferred in between the parties to the suit.

5 The petitioners moved the applications exhibits 27 and 45 in both the appeals seeking addition as a defendant. The entire history of the litigation between the parties is sought to be revisited right from 1958 onwards. A reference is found in the record that the suit No.11/1 of 1958 was filed. The same was decreed in terms of the compromise as the family members settled the issue of partition amongst themselves. At the time of oral partition in 1955-56, municipal house Nos.587, 587/1 and 588 were the subject matter. Much water has flown thereafter and in 2007, Special Civil Suit No.86/2007 was filed. The father of the petitioner was defendant no.1 in the said suit and the petitioner is now brought on record pursuant to the demise of his father. The said suit is still pending.

6 In the instant case, the issue is of eviction of the tenants by the landlord. The suits were decreed and it cannot be believed that the present petitioner was unaware about the pending suits for almost 10 years considering the role of his father. The regular civil appeals were

filed by original defendant no.2 and the tenant has not chosen to do so. The petitioner desires to be added as a necessary defendant or an answering respondent under Order 1 Rule 10 of the Code of Civil Procedure in the suit between the landlord and the tenant.

7 The first appellate court has delivered a detailed order running into about 15 pages, which is impugned in these two petitions. The appellate court has dealt with all the contentions of the petitioner and concluded that the petitioner is neither a necessary party nor, the appellate court would be handicapped by his absence in the suits. It is also recorded that the father of the petitioner had moved an application under Order 1 Rule 10 of the Code of Civil Procedure for being arrayed as a defendant in the said suits against the tenant and the said applications exhibit 123 in RCS No.2015/2012 and exhibit 81 in RCS No.1365/2012, were rejected.

8 The learned advocate for the petitioner submitted, on instructions, that these two applications were not rejected on their merits, but were rejected as the applications were not prosecuted and therefore, they were actually dismissed in default.

9 While hearing this matter, I proceeded on the footing that these two applications were rejected for non prosecution. However, the learned advocate for respondent nos.2 to 5 placed before this court the orders passed by the Trial Court dated 04.08.2014 indicating that the said

applications of the petitioner's father were rejected on merits. The said order has attained finality. The petitioner has, therefore, tried to mislead me.

10 The Honourable Supreme Court has held, in *Pankajbhai Rameshbhai Zalavadia vs. Jethabhai Kalabhai Zalavadiya, AIR 2018 SC 490* and *Vidur Impex and Traders Private Limited and others vs. Tosh Apartments Private Limited and others, (2012) 8 SCC 384*, that unless it is found that the third party is a necessary party or without which the suit cannot be effectually adjudicated upon, addition cannot be permitted. So also, it has been held that in an eviction suit or a suit having trappings of eviction suit, a third party who is not a tenant, is not required to be impleaded, inasmuch as, the landlord need not necessarily mean the owner or title holder of the property.

11 It is seen from the record that one Ramcharan purchased the suit properties on 07.03.1969 from the legal heirs of the owner Kutubuddin by registered sale deed No.525. Hari Narayan, who is the predecessor in title of respondent nos.2 to 5, purchased the said properties from Ramcharan by registered sale deed no.3646 dated 16.07.1979. These sale deeds have not been questioned before any court and cannot be called in question now. The defendant nos.2 to 5 are the legal heirs of Hari Narayan and the property is now belonging to them.

12 In the above backdrop, I do not find that the appellate court

has committed any error in rejecting the applications and the impugned order does not appear to be perverse or erroneous. Keeping in view the law laid down by the Honourable Supreme Court in the matter of ***Syed Yakoob Vs.K.S.Radhakrishnan and others [AIR 1964 SC 477]*** and ***Surya Dev Rai Vs. Ram Chander Rai [2003(6) SCC 682]***, this court cannot interfere with an impugned order unless it appears to be perverse, erroneous, against the tenets of law and likely to cause gross injustice to any litigant.

13 Both these Writ Petitions are, therefore, dismissed.

14 The Appellate Court is at liberty to proceed to decide the pending appeals in view of the earlier directions of this Court.

15 Though I was inclined to impose costs considering the conduct of the petitioner and the misrepresentation made before the court by instructing the learned advocate to make such submissions, the learned advocate for the respondents Shri Bora submits that he would not pray for costs.