

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

WRIT PETITION NO. 6683 of 2019

Shridhar Shankarrao Kurtadikar	... <u>Petitioner</u>
<u>Versus</u>	
Dr. Jeevan Shankarrao Kurtadikar and others	... <u>Respondents</u>

Mr. S.S. Gangakhedkar, Advocate for petitioner

CORAM : RAVINDRA V. GHUGE, J.

DATE : 11th JUNE, 2019

PER COURT:

1. The petitioner Shridhar is aggrieved by the impugned order dated 25th February, 2019 passed by the Trial Court, vide which application Exh. 13 filed by Shridhar seeking permission to be impleaded as a defendant in Reg. Civil suit No. 55 of 2018, has been rejected.

2. The learned Counsel for the petitioner has strenuously criticised the impugned order and has drawn my attention to the grounds formulated by him in the memo of petition. With his assistance I have gone through the petition paper book.

3. The suit has been preferred by Dr. Jeevan. The defendants are Waman, Milind and Makrand/respondents No.2 to

4 herein. The suit is for declaration of ownership and perpetual injunction so as to restrain the defendants from interfering and obstructing the peaceful ownership of the property bearing Gat No. 228 to the extent of 1H. 84R. Shridhar had the title and interest in Gat No. 205, which he sold to Baban, who is not a member of the family or their relative. Jeevan is said to be the owner of Gat No. 200 on the South side and Gat No. 205, now belonging to Baban, is on the West side. Subhash and Ulhas, who are related to the plaintiff, are the owners of Gat No. 229 on the East side and, Prashant, yet another relative, is the owner of Gat No. 227 on the North side.

4. Contention of Shridhar is that special civil suit No. 85 of 1999 was compromised between Jeevan and Shridhar alongwith Arvind Kurtadikar on 15th July, 1999 and Gat No. 200 was allotted to Jeevan. It is alleged by Jeevan that Shridhar had not given the possession of Gat No. 200 to him and, instead, gave the possession of Gat No. 228. This is the only reference mentioning the name of Shridhar in the entire plaint of three pages.

5. Shridhar submits that plaintiff Jeevan is his younger brother. Jeevan claims to be the owner and possessor of Gat No. 228. To the South of Gat No. 228, land Gat No. 200 is situated. Shridhar submits that Gat No. 200 is owned by Pandurang

though the same is recorded in the name of the plaintiff.

6. Considering the above, it would be necessary to consider the claim of Shridhar within the ambit of Order 1 Rule 3 of the Code of Civil Procedure as regards who may be joined as defendants. Order 1 Rule 3 reads as under :

“1. Who may be joined as plaintiffs.-

.....
3. Who may be joined as defendants.- All persons may be joined in one suit as defendants where-
(a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist against such persons, whether jointly, severally or in the alternative; and
(b) if separate suits were brought against such persons, any common question of law or fact would arise.”

7. As per the contention of the petitioner, his case could also be considered under Order 1 Rule 10(2), by which the Court may strike out or add parties. Order 1 Rule 10(2) reads as under:

“10. Suit in name of wrong plaintiff.-

.....
(2) Court may strike out or add parties.- The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.”

8. It is, thus, obvious that if the Court finds it necessary

to add a party so as to enable the Court to effectually and completely adjudicate upon the suit and settle all the questions involved in the suit, such addition could be sustained. In the suit at issue, Jeevan claims a declaration of ownership to Gat No. 228. There is nothing on record to indicate that Shridhar has a claim to Gat No. 228 and that any declaration in favour of Jeevan would gravely prejudice the interest of Shridhar and affect his right, title or interest. When Shridhar is unconnected with Gat No. 228 in view of the compromise decree in special civil suit No. 85 of 1999, the interest of Shridhar is neither at stake nor a decision in the said suit would affect him. He would, therefore, not be a necessary party to the suit or an answering or proper respondent since his interests are not involved. At best, Shridhar may appear as a witness on behalf of either of the litigating sides, if so desired.

9. This petition, being devoid of merit, is therefore, dismissed.

**(RAVINDRA V. GHUGE)
JUDGE**

Madkar