

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

WRIT PETITION NO. 6238 OF 2019

Bharat s/o Ganeshlal Choudhari,
Age : 45 years, Occ. Business,
R/o. Mahatma Gandhi Road, Jalna
Tq. & Dist. Jalna.

...PETITIONER
(Orig. Plaintiff)

VERSUS

1) The Municipal Council,
Through the Chief Officer,
Municipal Council Office,
Near Railway Station Road,
Jalna, Tq. & Dist. Jalna

2) Prakash @ Bhaiyyalal s/o
Babulal Nand, age : 72 yrs,
Occu : Business & agri.
R/o Behind M.G.M. Road,
Gavlipura, Jalna, Tq. &
Dist. Jalna.

...RESPONDENTS
(Respondent no.1 orig. Defendant)

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Advocate for the Petitioner : Shri S. B. Bhapkar
Advocate for Respondent No. 1 : Shri S. S. Tope h/f.
Shri Amit S. Deshpande
Advocate for Respondent No. 2 : Shri S. S. Kazi

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 31st JULY, 2019.

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ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
2. The petitioner original plaintiff in Regular Civil Suit No. 120/2019, is aggrieved by the order dated 18/04/2019 passed by the Trial Court, by which, Exhibit 13 filed by a third party seeking addition as a defendant, has been allowed.
3. I have heard the learned Advocates for the respective sides.
4. The learned Advocate for respondent No.2, who has preferred application Exhibit 13 seeking addition in the suit, strenuously submits that though the suit is in between the petitioner and respondent No.1 Municipal Council, Jalna, he had actually complained to the Municipal Council about the construction of a building by the plaintiff, which is creating an obstruction on a public road and the property of the Municipal Council. He submits that because of the erection of such constructions, his road is blocked and several residents of the

said area, are also facing the same obstruction. He had taken the lead to complain to the Municipal Council for removal of such encroachment.

5. The learned Advocate for the petitioner submits that the building has been erected in 1984 on the basis of a building permission granted by the Municipal Council. The location of the building is in a residential commercial area duly approved by the Municipal Council. The Municipal Council has issued certain notices to him. He has moved the suit for seeking injunction against the Municipal Council. The Trial Court would surely assess as to whether the petitioner is at fault and if he is held entitled for the reliefs prayed for and if the Trial Court concludes that the Municipal Council is unjustified in proceeding against the plaintiff, he would get his reliefs in the said suit.

6. The learned Advocate holding for the Municipal Council submits, on instructions, that the Municipal Council is opposing the suit. It would be the endeavour of the Municipal Council to place the facts before the Trial Court and assist the

Trial Court in the proper adjudication of the matter. The Municipal Council would surely protect its property.

7. It is settled law that when it comes to a litigation between the parties, the plaintiff normally is *dominus litis*. He is the master of this suit. The plaintiff seeks reliefs against such a party whose action has caused him a legal injury. Though the third party had initially complained to the Municipal Council, the Trial Court would consider as to whether the grievance voiced by the plaintiff as against the actions of the Municipal Council, deserves to be entertained.

8. This Court has held in *Ramesh s/o Shama Kumbhar & Anr. Vs. Sudhakar s/o Budha Kumbhar & ors., 2013 (4) Mh.L.J. 81*, that a decision in a suit would bind only the parties to the suit. In *Gopikabai Nathuram Malewar and anr. Vs. Bapurao Mahadeorao Surkar, [1995 (2) Mh.L.J. 816]*, this Court has held that a stranger cannot be impleaded in a suit.

9. I find that the Trial Court has failed to apply its mind to

the fact as to whether the non participation of the third party is likely to impact the result of the suit and would cause multiplicity of litigation. If the Trial Court cannot proceed in a suit in the absence of a party, addition of such party would be necessary.

10. In the instant suit, though the third party may have a grievance about the construction, ultimately the Trial Court has to consider whether the plaintiff had the valid permission and documents to erect such construction and whether a grievance can be considered after more than 35 years. In these circumstances, the Municipal Council is committed to protect its property and defend its actions. It does not require the support of a third party. I do not find that the cause of action in the suit would require the participation of the third party.

11. This petition is, therefore, allowed. The impugned order dated 18/04/2019 is quashed and set aside and application Exhibit 13 stands rejected. Rule is made absolute.

(RAVINDRA V. GHUGE, J.)

shp/-