

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

WRIT PETITION NO.5501 OF 2014

SOFIYABEE GANI KHAN AND OTHERS
VERSUS
SHAIKH VAZIR SHAIKH MEHMOOB AND OTHERS

...

Advocate for the Petitioners : Shri Kasliwal Ajit D.
Advocate for Respondent 3 : Shri R.S.Wani h/f Shri A.S.Bajaj.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 21st February, 2019

Per Court:

1 The Petitioners, who are the original Plaintiffs, are aggrieved by the order dated 03.04.2014 by which, the Trial Court has allowed the application Exhibit 71 filed by the third party, who is Respondent No.3 (Shaikh Basha Shaikh Maheboob) in this petition and has permitted the third party to be impleaded as Defendant No.3.

2 On 14.07.2014, this Court (Sunil P. Deshmukh, J.) has granted ad-interim relief in terms of prayer clause "C" thereby, staying RCS No.776/2011.

3 The learned counsel for the Petitioners submits that the suit preferred by the Petitioners/ Plaintiffs is for partition and separate possession. All the litigating sides belong to the Mohammedan

community. Under the Mohammedan law, none of the children acquire any right to the property during the lifetime of their father, who is owner of the property. It is also undisputed that under the Mohammedan law, the owner of such property is the exclusive owner and is capable of selling the property.

4 It is further contended that in a suit for partition and separate possession, the third party intervention is not necessary. The third party Shaikh Basha is not related to these litigating sides. The first Defendant is also not the son of the original owner Shaikh Shahanoor Shaikh Budan. He is an adopted son and the Mohammedan law prohibits adoption.

5 It is then pointed out that three properties have been put up for partition and separate possession. The third party is concerned only with regard to the land Gat No.26/3. The Plaintiffs are seeking partition and separate possession to the extent of land admeasuring 3 Acres and 4 Gunthas in Gat No.26/3. It is the case of the Plaintiffs that from the same Gat number in village Bhikapur, out of the total land admeasuring 26 Acres and 12 Gunthas, Shaikh Shahanoor has sold 13 Acres and 6 Gunthas to one Shaikh Rasool. These Plaintiffs are unaware about any sale of land by their father (Shaikh Shahanoor) to Shaikh Basha.

6 The learned counsel for the third party submits that since Shaikh Basha has purchased 7 Acres of land in Gat No.26/3 directly from Shaikh Shahanoor vide registered sale deed No.4612 dated 29.09.1980

and this 7 Acres of land is also part of the pending suit, due to which he has an interest in the suit.

7 I find that, it is settled law 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 the court has to assess as to whether, there would be complete adjudication of the suit without the participation of the third party. While deciding as to who is a necessary party, the court has to consider the interest of the third party directly involved in the dispute. Strangers are, therefore, not entitled to participate in such proceedings. However, if the ownership or share of a party would be decided with regard to an immovable property in a suit, the intervention of the third party would be necessary.

8 In view of the above, though I find that the Trial Court has not passed a well reasoned order and has passed an order, which does not elaborately deal with the said issue, I find that the conclusion in the impugned order would be sustainable.

9 Considering the above, this Writ Petition, being devoid of merit is, therefore, dismissed.

10 The learned Advocates for the Petitioners as well as the learned Advocate for the third party submit that they are interested in the early disposal of the suit, which is lodged in 2011.

11 I, therefore, find it appropriate to direct the Trial Court to decide RCS No.776/2011 as expeditiously as possible and in any case, on or before 31.03.2020. For the said purpose, the third party (Shaikh Basha) shall enter his written statement along with all documents that he desires to place reliance upon and his list of witnesses, on or before 30.03.2019 and shall not seek an adjournment. The Trial Court, thereafter, may frame additional issues by permitting all the litigating sides to address the court on addition of issues in the light of the averments set out by the third party. In view of the addition of the third party, the Plaintiffs would be at liberty to adduce additional evidence, if so advised.

kps

(RAVINDRA V. GHUGE, J.)