

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7516 OF 2019
(Shamsunder Pukharaj Maniyar Vs.Narayan Pukharaj Maniyar and
another)

Mr.S.B.Yawalkar, Advocate for the petitioner.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 03/07/2019

PER COURT :

1. The petitioner/original plaintiff in Spl.C.S.No.36/2017 is aggrieved by the order dated 28/03/2019 passed by the Trial Court allowing application Exh.32 filed by a third party seeking addition as a defendant under Order 1 Rule 10 of the CPC.

2. The contention of the petitioner is that the third party is his real brother, but unconnected with the pending suit. The suit has been filed by this petitioner on the basis of a Will executed by his father and mother vide which, he claims that the suit property has come to his share. The sole defendant in the said suit is alleged to be a gratuitous licensee. There is no dispute that the parents of the petitioner are said to have permitted the said defendant to occupy the suit property.

3. Grievance of the petitioner is that the scope of the suit would be enlarged as he had moved the said suit for deciding whether the defendant is a gratuitous licensee and whether the defendant deserves to be evicted. In such matters, a third party intervention is uncalled for. The third party is neither a necessary or answering respondent nor a proper party. Reliance is placed upon the judgment of this Court in the matter of Waman s/o Nago Choudhari and others Vs. Mahadu Nago and brothers and others [2010(5) Mh.L.J.452].

4. My attention is drawn towards the grounds formulated by the petitioner in the memo of the petition. It is further submitted that the third party has no interest in the pending suit. No relief has been sought against the third party and as such he is not necessary to be added to the proceedings.

5. I find that the petitioner and his real brothers and sisters are involved in Spl.C.S.No.111/2015, filed earlier. The said suit has been filed by Narayan Pukharaj Maniyar. The petitioner herein is defendant No.1 in the said suit. The same Narayan Pukharaj Maniyar is the third party, who has moved application Exh.32 in this suit filed by the petitioner in 2017.

6. In the 2015 suit, the issue is of partition and separate possession and a declaration that the Will allegedly executed by the parents of these parties, is not binding on the LR's of the deceased parents. In short, the will at issue is sought to be set aside and the parties desire partition and separate possession of the ancestral property.

7. In the present matter, the petitioner is not the person, who has permitted the defendant to occupy the suit property. The parents of the petitioner had introduced the defendant in the suit property. The petitioner's foundation in the 2017 suit is the existence of the Will Deed which has already been challenged in 2015, which is 2 years prior to the suit preferred by the petitioner. Naturally, the petitioner claims to have stepped into the shoes of his deceased parents on the basis of the Will. Narayan desires to be arrayed in the 2017 suit on the ground that if the suit is decreed, it will have to be only on the basis of accepting the Will to be legal and only then this petitioner would get a right to the suit property limited to the 2017 suit.

8. In my view, the Trial Court has rightly appreciated that the entire claim of this petitioner is based on the Will, which is already subject matter of challenge. Complications would arise if the suit is decreed without Narayan being impleaded as party as the Court will

have to conclude that Shamsdunder, who alone has a right to the said property in so far as taking it in his possession. Narayan is also likely to have a share in the property if the 2015 suit is decreed and the shares of the litigating sides are partitioned.

9. In the case of Waman Choudhari and others (supra), he was one of the partners, who wanted to be impleaded in a suit filed on behalf of the partnership firm seeking damages against the defendant originating from a commercial transaction. The damages would therefore, if the suit is decreed, be paid to the firm. Once the damages are paid to the firm, all the partners, depending upon their *inter-se* division of shares, would get the damages in that proportion. It is in that backdrop that this Court ruled that Waman was not a necessary party since he is a partner to the firm and the damages will be ultimately paid to the firm.

10. In view of the above, merely because a different view could be taken would not mean that the impugned order would call for an interference. This petition, being devoid of merit, is therefore dismissed.

(Ravindra V.Ghuge, J.)