

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11201 OF 2018

Sudhir s/o Shrinivas Joshi
Age : 47, Occu : Agriculture,
R/o. Bhraman Galli, Mantha,
Taluka Mantha, District Jalna.

... Petitioner
(Org. Plaintiff)

Vs.

1. Chief Officer,
Nagar Panchayat Office, Mantha,
Taluka Mantha, District Jalna. ... (orig. Defendant)

2. Dilip s/o Manik Naik
Age : Major, Occu : Service,
R/o. Bhraman Galli, Mantha,
Taluka Mantha, District Jalna. ... Respondents

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Advocate for the Petitioner : Mr. P. K. Lakhotiya
Advocate for Respondent No.1 : Mr. P. R. Patil
Advocate for Respondent No.2 : Mr. Aditya N. Sikchi

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CORAM : V. K. JADHAV, J.
DATED : 26th November, 2019

PER COURT:-

1. By consent of parties, heard finally at admission stage.
2. The petitioner/plaintiff has instituted the suit bearing Regular Civil Suit No. 17 of 2017 for a decree of perpetual injunction against respondent no.1/original defendant i.e. Chief

Officer, Nagar Panchayat, Mantha, Taluka Mantha, District Jalna. Pending suit, respondent no.2 herein had filed a third party application (Exhibit 15) under Order I Rule (10) of the Civil Procedure Code to add him as party defendant to the suit. Learned Civil Judge, Junior Division, Mantha, by the impugned order dated 26.06.2018 passed below Exhibit 15, allowed the said application and directed the petitioner/plaintiff to amend his plaint and add respondent no.2 herein as defendant no.2 in the said suit. Hence this Writ Petition.

3. Learned counsel for the petitioner submits that respondent no.1/original defendant had issued a notice dated 24.05.2017 to the petitioner/plaintiff for removal of the illegal construction. The petitioner/plaintiff resisted the said notice on all the grounds available to him. The petitioner/plaintiff was also constrained to institute Regular Civil Suit No. 17 of 2017 to protect his property and he has also filed an application Exhibit 5 for issuance of order of temporary injunction. Respondent no.2 herein filed a third party application below Exhibit 15 under Order I Rule (10) of CPC and the petitioner/plaintiff resisted the said application by filing reply. Learned counsel submits that the petitioner/plaintiff being a

dominus litis cannot be forced to add any person as a party to his suit. The petitioner/plaintiff has sought relief against the Nagar Panchayat. Learned counsel submits that the presence of respondent no.2 is not necessary in order to enable the court to effectually and completely adjudicate upon and settle the questions involved in the suit. Respondent no.2 herein cannot not be treated as a necessary or proper party. The order impugned is arbitrary, against the principles of law, equity and good conscience. The order impugned thus deserves to be quashed and set aside.

4. Learned counsel for the petitioner, in order to substantiate his contentions, place reliance on the following cases:

1. ***Gurmit Singh Bhatia vs. Kiran Kant Robinson and Others***, reported in **2019 AIR (SC) 3577**,
2. ***Kanhaiyalal Negi and Another vs. Nagar Palika Nigam, Khandwa***, reported in **2001 (3) M.P.L.J. 293**,
3. ***Mohamed Hussain Gulam Ali Shariffi vs. Municipal Corporation of Greater Bombay and Others***, reported in **2017 (6) All. M.R. 420**,
4. ***Ramesh Hiranand Kundanmal vs. Municipal Corporation of Greater Bombay and Others***, reported in **1992 AIR SCW 846**.

5. Learned counsel for respondent no.2 submits that the petitioner/plaintiff has suppressed the material facts in the suit before the trial court. Learned counsel submits that towards the western side of the suit house bearing house no. 112/4 measuring 20 X 15 feet, the house property bearing city survey no. 1501 of respondent no.2 is situated. There is a road south-north in direction in between the house property of the petitioner/plaintiff and respondent no.2. However, petitioner/plaintiff has made the construction over the house property in excess and he has made new construction of a toilet and cement *ota* (platform) over the said road and blocked the access. Learned counsel submits that the said toilet has been constructed on the road in front of the door of house property of respondent no.2. In consequence of which, light and air of the respondent's house is not only affected, but the access road to the respondent's house is also narrowed down. Respondent no.2 filed complaints before the authorities. However, the petitioner/plaintiff is politically influential person and as such, no action was taken against him by respondent no.1 Nagar Panchayat. Respondent and his family members lodged a complaint to the Grievance Redressal Portal of the Government of

Maharashtra against the encroachment and illegal construction made by the petitioner/ plaintiff and on the basis of the said complaint, respondent no.1 Nagar Panchayat conducted an inquiry and issued notice under Section 53(1) of the Maharashtra Regional and Town planning Act, 1966 to the petitioner and directed him to remove the said illegal construction. Even though the said notice came to be issued in the year 2016, the respondent Nagar Panchayat has not taken any further action against the petitioner/ plaintiff for the reason best known to it. In the year 2017, the petitioner and his family members approached to the various authorities against the illegal construction made by the petitioner. Learned counsel submits that the respondent is directly affected because of the said encroachment. Learned counsel submits that the construction of *ota*/platform on the road resulted into the accumulation of sewage and rain water and the same is entering into the house of respondent no.2. Respondent no.2 and his family members are facing various health problems on account the same. Thus, respondent no.2 is a necessary and proper party to the suit. Learned counsel submits that respondent no.1 Nagar Panchayat is not contesting the said suit. Even the respondent Nagar Panchayat has not filed any written statement nor resisted the application

seeking temporary injunction. The trial court has rightly allowed the application Exhibit 15. There is no substance in the Writ Petition and the same is liable to be dismissed.

6. Learned counsel for the respondent no.2, in order to substantiate his contentions, placed reliance on the following cases:

1. ***Chandrakant Dharma Bhonu vs. Pandurang Ramchandra Dandekar and Others***, reported in **2004 (2) Mh.L.J. 782**,
2. ***Dada s/o Gopinath Nimse vs. Collector, Ahmednagar and others***, reported in **2012(6) Mh.L.J. 357**,
3. ***Aijaz vs. Municipal Corporation of Greater Bombay***, reported in **2012(2) All M.R. 171**.

7. No doubt that the petitioner/plaintiff is a *dominus litis* and not bound to sue every possible adverse claimant in the same suit. However, in terms of Order I Rule (10) of C.P.C., the court may at any stage of the suit direct addition of the parties. It is open for the court to add at any stage of the suit a necessary party or a person whose presence before the court is necessary in order to enable the court to effectually and completely adjudicate upon and settle all

the questions involved in the suit. The case in hand is not a case where a total stranger or a third party was seeking to intervene in the suit with some ulterior motive. Respondent no.2 in the capacity of a neighbour, an affected person, is entitled to bring to the notice of the court, the violation of Municipal laws. In the instant case, respondent no.2 is affected because of the illegal construction of a toilet and a platform on the public road by the petitioner/plaintiff. It is also part of record that respondent no.2 has repeatedly approached various authorities to redress his grievance. It is also part of record that despite notice given to the petitioner/plaintiff about removal of the illegal construction over the portion of the road, the respondent Nagar Panchayat has not taken any action for a considerable period and on the other hand, the petitioner/plaintiff has instituted the suit against the respondent Nagar Panchayat for a decree of perpetual injunction. It is also part of record that the respondent Nagar Panchayat has not contested the suit by filing any written statement nor resisted the application filed by the petitioner/plaintiff seeking an order of temporary injunction. In the instant case, as a result of the unauthorized construction raised by the petitioner/plaintiff, not only the right to access of respondent no.2, the neighbouring house owner, is

affected, however, due to the said construction of toilet allegedly made in front of the door of the house of respondent no.2 and construction of the platform over the portion of public way, drainage water and rain water is entering into the house of respondent no.2. Thus, respondent no.2 is directly affected.

8. So far as the cases relied upon by the petitioner, in the facts of the case, it is concluded that the intervener is not a necessary or proper party. In the case of ***Gurmit Singh Bhatia vs. Kiran Kant Robinson and Others*** (supra), relied upon by learned counsel for the petitioner, the Hon'ble Supreme Court held that in a suit for specific performance of contract, the court cannot allow adjudication of collateral matters so as to convert the suit into a complicated suit for title between the parties.

9. In the case of ***Ramesh Hiranand Kundanmal vs. Municipal Corporation of Greater Bombay and Others*** (supra), in paragraph no. 14 of the judgment, the Supreme Court has made the following observations:

14. It cannot be said that the main object of the rule is to prevent multiplicity of actions though it may

*incidentally have that effect. But that appears to be a desirable consequence of the rule rather than its main objective. The person to be joined must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some question involved and has thought of relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that the person must be directly or legally interested in the action in the answer, i.e., he can say that the litigation may lead to a result which will affect him legally that is by curtailing his legal rights. It is difficult to say that the rule contemplates joining as a defendant a person whose only object is to prosecute his own cause of action. Similar provision was considered in *Amon v. Raphael Tuck & Sons Ltd.*, (1956) 1 All E.R. 273, wherein after quoting the observations of Wynn-Parry, J. in *Dollfus Mieg et Compagnie S.A v. Bank of England*, (1950) 2 All E.R. 605 (611), that the true test lies not so much in any analysis*

of what are the constituents of the applicants' rights, but rather in what would be the result on the subject-matter of the action if those rights could be established, Devlin, J. has stated:- "The test is 'May the order for which the plaintiff is asking directly affect the intervenor in the enjoyment of his legal rights.'"

10. In the instant case, respondent no.2 is bound by the result of the action and the question to be settled. He has a direct interest in the litigation and as such his presence cannot be dispensed with. In the result, I find that the trial court has rightly allowed the application Exhibit 15. There is no substance in this Writ petition and the same is hereby dismissed.

11. Learned counsel for the petitioner, at this stage, submits that the order may be stayed for a period of further four weeks so as to enable the petitioner to approach the Supreme Court. I find no reason to stay the order. Request is refused.

(V. K. JADHAV, J.)

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