

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

WRIT PETITION NO. 11144 OF 2019

MEERABAI NAVAL PATIL AND OTHERS
VERSUS
SUREKHA RAMESH PATIL THROUGH SPECIAL POWER
OF ATTORNEY GAURAV SURESH PATIL AND ANOTHER

...
Advocate for the Petitioners : Shri V. P. Patil
Advocate for Respondent No.1 : Shri U. S. Malte

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 04th NOVEMBER, 2019.

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PER COURT :

1. The petitioners are third parties, who are aggrieved by the order dated 26/07/2019 passed by the Trial Court, by which, application Exhibit 32 filed by the petitioners seeking addition as defendants in Regular Civil Suit No. 27/2017, has been rejected.

2. The petitioners contend that they were the persons, who had first complained to the Grampanchyat, Gartad pointing out that respondent No.1 original plaintiff was indulging in construction, though on her own plot, but the partition wall (Padadi)

erected by her was actually blocking the path of 29 residents of the same village. All of them came together and moved the authorities of the Grampanchayat. They complained that the RCC structure erected by the plaintiff was creating an obstruction. It also amounts to an encroachment to some extent. Based on the complaint of 29 persons, the Grampanchayat initiated action against the plaintiff. In order to restrain the Grampanchayat from demolishing the said wall, the plaintiff approached the Trial Court and temporary injunction has been granted in favour of the plaintiff.

3. The petitioners further submit that at one stage, they have also carried the dispute upto the Honourable Minister and after succeeding in waking up the Grampanchayat against the objectionable act of the plaintiff, that the Grampanchayat initiated action against the plaintiff.

4. It is further pointed out that the Grampanchayat is deliberately being negligent in the suit so as to

serve the purpose of the plaintiff. Initially the Grampanchayat did not file its written statement. 'No W.S.' order was also passed on 18/6/2018. After the petitioners again raised an objection, that the Grampanchayat appeared before the Trial Court and then filed its written statement. They have a serious apprehension that the Grampanchayat would halfheartedly participate in the proceedings so as to allow the plaintiff to succeed.

5. The learned Advocate appearing on behalf of the plaintiff has strenuously opposed this petition. He submits that the plaintiff is the master of her suit. She has not claimed any relief against any of the petitioners or the 29 complainants. She has only sought relief against the Grampanchayat. The Trial Court would not be handicapped due to the absence of the petitioners. They are neither necessary nor answering defendants and are not required to be arrayed as such. He further adds that the Trial Court has rightly rejected application Exhibit 32 after realizing that these petitioners are not necessary in

the said proceedings. The plaintiff has filed an affidavit in lieu of examination in chief and the petitioners intend to delay the proceedings by unnecessarily seeking addition as defendants.

6. Considering the submissions of the litigating sides and upon perusing the record, I find, prima-facie, that the Grampanchayat was in deep slumber when the plaintiff was erecting her construction. After the concerned wall was erected creating an obstruction to the 29 residents residing in the vicinity, they had raised a grievance before the Grampanchayat. With continued persuasion they could ensure that the Grampanchayat initiated action. They also had to approach the Minister in the State Ministry for the said purpose.

7. It also appears from the record that the Grampanchayat was not wholeheartedly participating in the said proceedings. 'No W.S.' order was also passed against it. After the petitioners exerted pressure, that the Grampanchayat approached the

Trial Court and moved an application for recalling of the order so as to enable it to file its written statement.

8. The learned advocate for the petitioners submits on the basis of a service affidavit and the tracking report of the Advocate's notice issued to respondent No.2 Grampanchayat, that the Grampanchayat was intimated of the proceedings initiated by the petitioners in this Court. Despite service of Advocate's notice, none have caused an appearance.

9. In the peculiar facts as recorded above, the contesting respondent in this matter is the original plaintiff / respondent No.1. I find from the record that the Grampanchayat, for the present cause of action, is just a formal party and Court notice is not necessary.

10. In view of the fact situation recorded as above, there is room to doubt as to whether the Grampanchayat seriously desires to participate in the pending suit. If the Grampanchayat halfheartedly

contests the suit, the apprehension of the petitioners that it desires to support the plaintiff is likely to come true.

11. The learned Advocate for the petitioners submits that only petitioner No.3 namely Shri Mangal Bhika Patil will represent all the 29 original complainants in the suit and he alone may be arrayed as defendant No.2.

12. The learned Advocate for the plaintiff submits that the observations of this Court in this order may be restricted only to the extent of deciding application Exhibit 32 and the Trial Court would decide the main suit on its own merits. The said request is accepted as being fair and the observations of this Court in this order shall not influence the Trial Court while deciding the suit on its merits.

13. In the peculiar facts and circumstances , this petition is allowed. The impugned order dated 26/7/2019 is quashed and set aside. Application

Exhibit 32 is allowed with the following directions :-

- (a) The plaintiff shall add petitioner No.3 Shri Mangal Bhika Patil as defendant No.2, on or before 18/11/2019.
- (b) Since the amendment can be carried out conveniently by entering the name of Mangal Bhika Patil as defendant No.2, a separately/freshly typed copy of the plaint need not be submitted.
- (c) A spare copy of the suit alongwith all the annexures shall also be supplied before the Trial Court on or before 18/11/2019 to enable Mangal Bhika Patil to *suo moto* appear on the said date and receive the case papers.
- (d) The added respondent shall file his written statement on or before 6/12/2019 and shall not seek any extension of time.

- (e) The plaintiff is at liberty to counter the pleadings of the added defendant, if so desired, by seeking permission of the Trial Court and also an additional affidavit in lieu of examination in chief considering the pleadings of the added defendant.

(RAVINDRA V. GHUGE, J.)

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