

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13891 OF 2018

MUBARAK KASHIM DESHMUKH
VERSUS
HAMIDABEE KHURSHID DESHMUKH AND OTHERS

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Advocate for Petitioner : Shri Salunke V.D.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: January 29, 2019
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PER COURT :-

1. The petitioner / plaintiff in RCS No.574 of 2014 is aggrieved by the order dated 24.9.2018, passed by the trial Court, by which, application Exhibit 66, filed by a third party for being added as a defendant in RCS No.574 of 2014, has been allowed.

2. Learned counsel for the plaintiff has strenuously assailed the impugned order. It is contended that about eight different properties have been placed in the common hotchpotch by the plaintiff in his suit filed for recovery of shares in the suit land as a common tenant, or alternatively, for partition and separate possession with perpetual injunction. Only persons, who are inter se related to each other and have interest in the ancestral properties, could be parties to the litigation. The plaintiff is dominus litis and he is the master of his suit. If a necessary defendant is not added, he would suffer the consequences

of non-joinder of parties.

3. It is further contended that the third party claims to have entered into an agreement for sale with the first defendant, who has passed away during the pendency of the suit. Merely because the third party may have purchased the share of the deceased / defendant No.1, would not be sufficient to add the third party as a defendant. The suit is lodged in 2014 and defendant No.1 claims to have sold 70 Ares land during the pendency of the suit.

4. It is pointed out from application Exhibit 66 that the third party has nowhere stated as to which is the Gut number from which she has purchased the land from the first defendant. The decision in the suit, with regard to the share of the first defendant, would apply to the third party since her rights, if any, would flow only from the rights of the deceased / defendant No.1. Reliance is placed on the judgment of the Honourable Apex Court in the matter of Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay [(1992) 2 SCC 524].

5. I find from the impugned order that it was brought to the notice of the trial Court that the deceased / defendant No.1 has sold her share in Gut No.38 to the third party. It was contended that the land was exclusively owned and possessed by the husband of defendant No.1.

After his demise and since defendant No.1 urgently required money for her medical treatment and for domestic purposes, that she sold 70 Ares of land from Gut No.38 and has received an amount of Rs.4,25,000/- and subsequently, she received an amount of Rs.6,25,000/-. The sale deed could not be executed as the trial Court had clamped temporary injunction against the defendants.

6. In the above backdrop, the trial Court has noted that since defendant No.1 is now deceased and has no legal heirs, the addition of the third party in her place would be necessary as the third party claims a right to 70 Ares land and due to the demise of defendant No.1, there would be nobody to defend the act of the deceased / defendant of selling 70 Ares of land.

7. I find that the addition of the third party would assist the trial Court in dealing with the issue of 70 Ares land having been sold to her, inasmuch as, the trial Court would also have to decide, whether deceased defendant No.1 has sold her own share or whether the said sale would amount to parting away with somebody else's share. As such, the impugned order cannot be termed as being perverse and more so when the dispensation of justice has not suffered by the impugned order.

8. Learned counsel for the plaintiff has raised an issue of limitation in relation to the claim put forth by the third party. In my view, as the third party is permitted to be arrayed as a defendant, she would file her written statement and the plaintiff can raise the issue of limitation, if the same is actually involved. The trial Court can consider, whether any issue of limitation needs to be framed in the light of the pleadings of the third party and it can accordingly do the needful.

9. In view of the above, this petition fails and stands dismissed. However, in view of the observations made in the paragraph No. 8, the trial Court would consider the pleadings of all the parties, while framing issues in the matter.

(RAVINDRA V. GHUGE, J.)

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