

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.14151 OF 2018
(Kasabai w/o Ajabdas Shinde Vs. Jabbar Khan Maheboob Khan and
others)
IN
APPEAL FROM ORDER NO.54 OF 2018

Mr.Sanghmitra Wadmare, Advocate for the applicant.
Mr.N.T.Bhagat, AGP for the respondent/State.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 22/02/2019

PER COURT :

1. The applicant prays for leave to intervene in the appeal from order. The applicant desires to correct the prayer clause to delete the words "*and traverse the pleadings of the applicant*". Leave to delete, is granted.

2. I have heard the learned Advocates for the respective sides. There is no dispute that the present applicant was one of the plaintiffs in RCS No.610/1989 which was decreed by order dated 06/04/1999. The appellants in AO No.54/2018, one of the defendants in the said suit, are the legal heirs of the original defendants, who are judgment debtors. They preferred RCS No.627/2018 and put forth the following 2 prayers :-

“[a] By decree of mandatory injunction the defendant No.1 to 3 be directed to execute and finalize the decree in terms of the directions of Jt.C.J.J.D. at Aurangabad in R.C.S.No.610/89 i.e. as per the operative part No.5 of the preliminary decree dated 6.4.1999 thereby to exclude the suit properties already sold and in possession of the purchasers i.e. of defendant No.12 and 13 in R.C.S.No.610/1989 i.e. of plaintiffs No.1 to 3.

[b] By decree of perpetual injunction the defendant No.1 to 3 be restrained from causing obstruction and interference in the peace possession and enjoyment of the plaintiffs of the suit property particularly from dispossessing the plaintiffs from the suit property as described in claim clause A and B of the plaint.”

3. The record reveals that the original decree holder is the present applicant, who has been excluded in RCS No.627/2018 and in MCA No.113/2018. Considering the prayers reproduced above from the 2018 suit, I find that this applicant deserves to be impleaded as respondent No.5 in AO No.54/2018.

4. This civil application is, therefore, allowed. The appellants are directed to implead this applicant as respondent No.5 in the AO and CA on or before 11/03/2019, failing which, the AO and the CA shall stand dismissed without reference to the Court on 12/03/2019.

5. Needless to state, the applicant who is the added respondent No.5, is at liberty to enter her affidavit in reply to the AO and the civil application.

6. The ad-interim relief, granted earlier, would continue.

(Ravindra V.Ghuge, J.)