

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

WRIT PETITION NO. 12857 OF 2016

Ravi Bhaurao Shinde and others	... Petitioners
Versus	
Mahalingappa Revansidhappa Yerte and others	... Respondents

....
Mr. S. S. Manale, Advocate for petitioners.
Mr. S. S. Bhise, Advocate for respondent No.1.
Mr. M. M. Dabholkar, Advocate for respondent Nos. 4 to 6.

CORAM : M. S. KARNIK, J.

DATED : 13th AUGUST, 2019

PER COURT :-

1. Heard learned counsel for the petitioners.
2. The petitioners are challenging the order dated 19th September, 2016 passed by the trial Court allowing the application Exhibit-40 and partly allowing the application Exhibit-43 for impleading respondent Nos. 4 to 6 as party defendants to the suit. Learned counsel for the petitioners would submit that the petitioners-original plaintiffs had filed suit for perpetual injunction restraining defendant Nos. 1 to 3 from disturbing the possession of the plaintiffs over 21 R of land, which is the subject matter of the suit.

3. It is the submission of learned counsel for the petitioners that the plaintiffs had sold 4 Acres of land by a registered sale-deed in favour of defendant Nos. 1 to 3. Thereafter, an area of 2 Acres from *Gat* No.88 is sold to one Khonde Patil. According to learned counsel for the petitioners, an area to the extent of 21 R remained with the plaintiffs. It is his case that taking the advantage of incorrect description of boundaries in the agreement made in favour of Khonde Patil, defendant Nos. 1 to 3 are trying to encroach upon the suit property of the petitioners. Learned counsel for the petitioners would submit that the trial Court was not right in permitting respondent Nos. 4 to 6 to implead themselves as party defendant Nos. 4 to 6.

4. Learned counsel for the respondents on the other hand would submit that respondent Nos. 4 to 6 had purchased the land from defendant No.1. Defendant Nos. 4 to 6 by various sale-deeds purchased the separate plots of land as demarcated by defendant No.1. He would further submit that defendant Nos. 4 to 6 have filed separate suits for injunction against the plaintiffs from obstructing their possession in respect of the suit property. According to him, the suits have been decreed *exparte*.

5. Learned counsel for the petitioners would point out that an application has already been made for setting aside the exparte decree and the same is pending.

6. I have gone through the order passed by the trial Court. There is no dispute that respondent Nos. 4 to 6 have purchased that part of the land from defendant No.1 which was sold to defendant No.1 by the plaintiffs. The plaintiffs claimed to be in occupation of 21 R of land after selling the area of 2 Acres of land to one Khonde Patil. It is the contention of the plaintiffs that taking advantage of the incorrect description of boundaries mentioned in the agreement, defendant No.1 is trying to take advantage and encroaching upon the balance 21 R land which is available with the plaintiffs. The petitioners have already instituted a suit against Khonde Patil. I find that, even respondent Nos. 4 to 6 have filed suit against the petitioners-plaintiffs. Respondent Nos. 4 to 6 have purchased the land from defendant No.1 which originally belonged to the plaintiffs' father.

7. In this view of the matter, if the plaintiffs have instituted suit against defendant No.1, which he has sold to respondent Nos. 4 to 6 and if in these circumstances the trial Court has allowed the application for impleadment, I do not see any reason to interfere with the order passed by the trial Court. Moreover, the suits filed by respondent Nos. 4

to 6 against the plaintiffs are also decreed though by an exparte decree. The application has been made by the plaintiffs for setting aside the exparte decree, which obviously will be decided on its own merits and in accordance with law.

8. Considering the above, I do not find any reason to interfere with the order passed by the trial Court. The writ petition is therefore, rejected.

[M. S. KARNIK, J.]

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