

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.37 OF 2019

TRIMBAK RAMA MORE AND OTHERS
VERSUS
LAXMAN KADUBA MORE AND OTHERS

Mr.A.D.Khot, Advocate for the petitioners.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 30/08/2019

PER COURT :

1. Despite service of court notice on the respondents, none have caused an appearance either in person or through an Advocate. This Court had indicated by order dated 10/01/2019 that the matter would be considered finally at admission stage.
2. The petitioners/original plaintiffs in RCS No.89/2016 are aggrieved by the order dated 17/11/2018 passed by the Trial Court, by which application Exh.28 filed by the plaintiffs is partly allowed.
3. I have heard the learned Advocate for the petitioners and have gone through the petition paper book with his assistance.

4. The plaintiffs moved Exh.28 seeking amendment to the plaint under Order 6 Rule 17 of the CPC and seeking addition of parties under Order 1 Rule 10 of CPC. The request for amendment and addition was made on the basis of the report of the TILR, who was appointed as a Court Commissioner by the Court. The report indicated that the proposed defendants had committed encroachment alongwith some of the defendants. The plaintiffs therefore moved Exh.28 to add the proposed defendant Nos. 12 to 17 since they were *prima facie* found to have encroached upon the suit land and the plaintiffs would then have to seek recovery of possession from each of them. If they are not arrayed as defendants, the plaintiffs can not seek the relief against the proposed defendants.

5. I find that the Trial Court has gone into the merits of the proposed amendment and has made certain observations. So also, the Trial Court has concluded that, *"The cause of action against the defendants and the proposed defendants is similar, but not the same. Present defendants and proposed defendants are not jointly liable to the plaintiffs. The joinder of proposed defendants may embarrass or delay the trial of suit. If the proposed defendants are added and pleading in respect of cause of action*

against them is joined, the suit will be bad for mis-joinder of defendants and causes of action."

6. I find that the above stated conclusions of the Trial Court are not sustainable. In a suit for seeking removal of encroachment and possession alongwith mesne profits and compensation, all those persons, who may have encroached upon the land of the plaintiffs, would be liable to be dispossessed by following the due process of Law, provided they are arrayed as defendants. Such effective directions cannot be issued by the Trial Court in the absence of such defendants.

7. In view of the above, this petition is allowed. The direction at clause No.3 of the impugned order dated 17/11/2018 stands quashed and set aside and application Exh.28 is allowed even to the extent of the addition of parties. The plaintiffs shall proceed to add the proposed defendants on or before 18/09/2019 and shall submit a freshly typed amended copy of the plaint on or before the same date.

(Ravindra V.Ghuge, J.)