

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 1049 OF 2018**

Shree Shantadurga Kumbharjuvekarin
Devasthan Organ, Marcel, Thr. its Att.
Harishchandra Goude, Petitioner
Versus
Smruti Rajesh Desai & 5 Others Respondents

Mr. J.E. Coelho Pereira, Senior Advocate with Mr. Vinod Korgaonkar, Advocate for the Petitioner.

Mr. Ashwin D. Bhobe with Ms. Kalpa Govekar, Advocates for the Respondents.

CORAM : C.V. BHADANG, J.**Reserved on : 9th July, 2019****Pronounced on : 24th July, 2019****ORDER:**

The challenge in this petition is to the order dated 03.07.2018 (below Exhibit D-64), passed by the learned Civil Judge Junior Division Ponda in Regular Civil Suit No. 24/2012/B. By the impugned order, the learned Trial Court has allowed an application Exhibit D-64, filed by the respondent nos. 3 to 6 (intervenors), for their impleadment as defendant nos. 3 to 6.

2. The brief facts necessary for the disposal of the petition may be stated thus:

That the petitioner filed the aforesaid suit against Balaji Ramnath Naik (since deceased), for permanent and mandatory injunction and for damages. According to the petitioner, it is the owner of a property known as 'Pandavwada' bearing survey no. 57/10 of village Orgao, which as per survey record is admeasuring 6,125 square metres, although, the actual area of the said property is more than 6,125 square metres. The said property is referred to as the 'suit property'. There are certain houses in the suit property, which are in occupation of the licencees of the petitioner. There is a house near the deepsthambh, which is shown in the survey plan under no. 13, which is the 'suit house'.

3. Late Balaji Ramnath Naik (original defendant) by a letter dated 20.12.2010, sought permission of the President of the petitioner to repair/renovate the suit house, alleging that the suit house is recorded in the name of Roulo Morto Naik in the record of the petitioner-Devasthan and the same was used by family of Naik-Chodankar to celebrate annual Malini Pornima Zatra festival. That the family of Subraya Roulu Naik and Vaman Roulu Naik had authorized the defendant to act on their behalf in the interest of the family.

4. According to the petitioner, the claim made by defendant was patently false and mischievous. The petitioner sent a reply on 23.03.2011 and denied the claim of the defendant late Balaji Ramnath Naik. It was claimed that the suit house belongs to the petitioner and was in its possession and the suit house was closed for more than fifty years. It was denied that Subraya Roulu Naik had to do anything with the suit house. Late Balaji Ramnath Naik, however, persisted and started claiming mundkarial rights in respect of the suit house.

5. On 19.02.2012, the defendant and its so called Attorney, Datta S. Naik trespassed in the suit house and with help of some labourers dismantled the entire roof of the suit house and dug pits to erect RCC columns. The matter was reported to the police.

6. It is in these circumstances that the petitioner filed the suit for injunction, restraining the defendant or any body on his behalf from interfering or making any construction in the suit property and for damages.

7. The original defendant late Balaji Ramnath Naik resisted the suit, claiming ownership rights over the suit house

through his ancestors. Balaji Ramnath Naik died on 03.03.2016. On an application being made by the petitioner, the respondent nos. 1 and 2 being the daughter and the son-in-law of Balaji Ramnath Naik have been brought on record as his legal representatives.

8. On 28.11.2017, the respondent nos. 2 to 6 filed application Exhibit D-64, under Order I Rule 10 of CPC, for their addition/impleadment as defendants, claiming to be legal representatives of late Ramnath Vaman Naik. It is contended that the suit house belonged to Ramnath Vaman Naik and after his death has been inherited by the intervenors and as such, they are necessary parties to the suit. It was contended that these respondents learnt about the suit on 29.09.2016 and thereafter, the application for impleadment is filed.

9. The application was opposed by the petitioner on the ground that the intervenors are neither necessary nor proper parties to the suit.

10. The learned Trial Court has found that the respondent nos. 3 to 6 have shown their interest in the suit house and hence, they need to be impleaded as defendants.

11. I have heard Mr. Coelho Pereira, the learned Senior Counsel for the petitioner and Mr. Bhobe, the learned Counsel for the respondents. Perused record.

12. It is submitted by Mr. Coelho Pereira, the learned Senior Counsel for the petitioner that the petitioner being the plaintiff is the *dominus litus* and thus, impleadment of the respondent nos. 3 to 6, against the wish of the petitioner and that too, in a suit for injunction simplicitor was not justified. It is submitted that the interference with the possession of the petitioner of the suit house was only by late Balaji Ramnath Naik and his alleged Attorney Datta S. Naik. It is thus submitted that the petitioner cannot be made to contest the suit against the respondent nos. 3 to 6, who according to the petitioner have not interfered with the possession. It is submitted that the claim of these respondents of any alleged mundkarial rights has to be got adjudicated by them in appropriate proceedings, if so advised. It is submitted that the learned Trial Court has misapplied the law on the point of addition of a party. It is submitted that the respondent nos. 3 to 6 are neither necessary nor proper parties to the suit.

13. Mr. Bhole, the learned Counsel for the respondents has supported the impugned order. It is submitted that the respondent nos. 3 to 6 are claiming through Ramnath Vaman Naik and as such, are necessary parties to the suit, as has been rightly held by the learned Trial Court. It is submitted that the learned Trial Court having held that these respondents have shown their right in the suit house, their impleadment is legal and proper.

14. I have considered the rival circumstances and the submissions made. Although, a plaintiff is *dominus litus* and therefore, can decide as to who should be arrayed as parties to his suit, such a right and privilege of the petitioner is subject to overriding powers of the Court under Order I Rule 10 of CPC to add or strike off parties. We are presently concerned with a claim for addition of parties. A party can be added as a defendant, if it is found to be a necessary or a proper party. A necessary party is one whose presence is necessary and no effective decree can be passed in his or her absence. A proper party on the other hand is one, who although may not be a necessary party, whose presence would enable the Court to completely and effectively adjudicate upon all matters in dispute, in the suit, although, no relief may have been claimed

for or against any such party. The question whether a party is a necessary or a proper party would depend on facts and circumstances of each case.

15. Coming to the present case, the suit was originally filed only against late Balaji Ramnath Naik. The plaint itself makes a reference to a letter dated 20.12.2010, by Balaji Ramnath Naik, seeking permission to repair/renovate the suit house. In the said letter, the original defendant has made reference to the suit house being registered in the name of Roulu Mortu Naik in the record of the petitioner. Although, it is denied by the petitioner it is not necessary to go into the merits of such controversy, which will have to be gone into at the trial of the suit. Roulo Naik had two sons Subrai and Vaman. Vaman had three sons (i) Ramnath, (ii) Krishna and (iii) Pandurang. Ramnath had three sons (i) Balaji (original defendant), (ii) Ganpat @ Vaman and (iii) Vasant. Vasant has expired on 29.08.2002. The intervenors Ramnath and Sudin are the sons of Vasant, while Ashma is the wife of Ramnath and Santoshi is the wife of Sudin. The petitioner has enclosed a list of documents produced by the defendant in the suit, which includes a no objection certificate dated 21.11.1992, issued by Village Panchayat, Tivrem, Orgao in the name of Ramnath Vaman Naik,

for release of water supply connection to the suit house. There are certain other documents also, which are listed in the said list. Form no I & XIV of suit property shows the name of Ramnath Vaman Naik, against House no 13. The learned Trial Court after considering these circumstances has come to the conclusion that the intervenors have shown some semblance of a right to the suit house and has allowed the intervention. The discretion so exercised in the absence of it being arbitrary or capricious, in my considered view, is not amenable to interference in the supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

The petition is without any merit and is accordingly dismissed, with no order as to costs.

C. V. BHADANG, J.

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