

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.452 OF 2013

Nizamuddin A. Sattar Khalife .. Petitioner

vs.

Hasan Ibrahim Mulla and Ors. .. Respondents

Mr.Saurabh Butala I/b Mr.Anwar M. Landge for the petitioner

Mr.S.M.Kamble for the respondent nos.1 to 3

**CORAM: K.K. TATED, J
DATED : JANUARY 31, 2019**

P.C. :

1 Heard.

2 By this petition under Article 227 of the Constitution of India, the Petitioner third party challenges the order dated 26.11.2012 passed by Joint Civil Judge, Junior Division, Rajapur below Exhibit-70 in Regular Civil Suit No. 24 of 2009 allowing Respondent original plaintiff's Application for joining him as party defendant in the Suit.

3 The learned counsel for the Petitioner submits that in the present proceedings, Respondent no.4, Rajapur Nagar Parishad issued notice to the plaintiffs in respect of unauthorised construction carried out by him. That was challenged by the

plaintiff upto Second Appeal No.736 of 2007. He submits that when the Second Appeal was before this court on 23.10.2007, at that time, plaintiff made Application before this court for permission to withdraw the Second Appeal with liberty to file appropriate Application before Municipal Council for regularisation of the construction.

4 Thereafter, pursuant to the said order, Respondent no.4 issued notice dated 19.12.2018 calling upon the plaintiff to remove unauthorised construction. That was challenged by the plaintiff by filing Regular Civil Suit No. 24 of 2009 in the court of Joint Civil Judge, Junior Division, Rajapur for an order of injunction restraining Municipal Council from taking any action in respect of his suit premises.

5 In Regular Civil Suit No.24 of 2009, Respondent no.5 wife of the Petitioner made Application for joining her as a party under Order 1 Rule 10 of the Code of Civil Procedure, 1908 on the ground that on the basis of her complaint only Municipal Council started taking action against the plaintiff. That Application was allowed by the Trial Court on 21.07.2010 and thereafter Respondent no.5 joined defendant no.2 in that Suit.

6 The learned counsel for the Petitioner submits that plaintiff with mala fide intention filed Application for joining him as defendant in the said suit just for harassment and nothing more than that. Plaintiff also made Application to carry out amendment in the plaint, for placing on record the fact that even petitioner carried out unauthorised construction in his property.

He submits that said Application was allowed by Joint Civil Judge, Junior Division Rajapur by order dated 26.11.2012 and hence, Petitioner filed the present Writ Petition.

7 The learned counsel for the Petitioner submits that court below erred in coming to the conclusion that Petitioner is a necessary party in the suit filed by the plaintiff for injunction against the Municipal Council from taking any action in respect of unauthorised construction. He submits that Petitioner is not concerned with the matter at all. He further submits that cause of action of the suit and amendment proposed by the plaintiff, is altogether different. He submits that Trial Court failed to consider the fact that because of amendment entire nature of the Suit is going to change. Hence, impugned order dated 26.11.2012 is required to be set aside.

8 On the other hand, the learned counsel for the Respondent original plaintiff vehemently opposed the present Writ Petition. He submits that Trial Court passed impugned order after considering the fact on record and therefore, there is no question of interference in the said order.

9 Heard.

10 In the present proceedings, Petitioner has his house, next to the house of the plaintiff. To bring the conduct of the Petitioner on record, plaintiff has filed Application for joining him as party and for carrying out amendment in the plaint.

11 Considering these facts and the reason disclosed by him in Trial Court at the time of filing Application for carrying out amendment, I do not find any reason to interfere with the said order. Court held that amendment is not going to change the nature of the suit. There is no application for carrying out any prayers in the Suit. In view of these facts, I do not find any substance in the present Writ Petition. Hence, following order:

- a. Writ Petition is rejected.
- b. Hearing of Regular Civil Suit No.24 of 2009 is expedited.
- c. This court expects Trial Court to decide Regular Civil Suit No. 24 of 2009 on its own merits without influencing the order passed by this court as early as possible but in any case on or before 29.06.2019.
- d. Oral request of petitioner for continuation of the stay granted by this court, is rejected.
- e. No order as to costs.

(K.K. TATED, J.)