

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7909 OF 2015

Appaso B. Patil and anr. .. Petitioners
vs.
Appaso S. Patil and ors. .. Respondents

Mr. Surel S. Shah for the Petitioners.
Mr. Manoj Patil for Respondent Nos.1 and 2.
Mr. Suresh M. Kamble for the Respondent No.4.

CORAM : M. S. SONAK, J.
DATE : 11 MARCH 2019.

ORAL JUDGMENT:

1] Heard Mr. Surel S. Shah, learned counsel for the petitioners, Mr. Manoj Patil for respondent No.1 and 2 and Mr. Suresh Kamble, learned counsel for respondent No.4. Respondent No.3, though served, was not put in appearance through any representative or advocate.

2] This Court by order dated 23 September 2015 had made it clear that the petition will be heard and disposed of finally at the admission stage. In the meantime, the ad-interim relief in terms of prayer Clause (D) had also been granted.

3] Accordingly, Rule. Rule is made returnable forthwith, with the consent of and at the request of learned counsel for the parties as also in view of the order dated 23 September 2015.

4] The challenge in this petition is to the order dated 1 July 2015 by which the petitioners' application for impleadment as defendants in the suit by invoking the provisions of Order 1 Rule 10 of CPC came to be rejected.

5] The record indicates that Regular Civil Suit No. 573 of 2014 was instituted by respondent Nos.1 and 2 seeking relief of permanent injunction against respondent Nos.3 and 4 from deleting their names in the assessment records and restraining the said two respondents from entering names of any other persons in its place.

6] From perusal of the plaint as also the legal notice dated 3 February 2014 addressed by respondent Nos.1 and 2 (original plaintiffs), it is clear that apprehension on the basis of which the suit came to be instituted was the efforts on the

part of the petitioners herein to claim ownership in respect of the property bearing survey Nos.14/1 and 14/2 and on such basis seek the entry of their names in the assessment records.

7] According to me, since the entire basis of the suit is the attempt on the part of the petitioner to get their names entered in the assessment record, it was the duty of respondent Nos.1 and 2 (original plaintiffs) who have impleaded the petitioners as defendants in the suit. The relief, as claimed for by respondent Nos.1 and 2, if granted, would directly affect the petitioners herein. In that sense, the petitioners are necessary parties to the suit.

8] Mr. Manoj Patil, however, contended that the petitioners have no right, title or interest in respect of property surveyed under No.14/1 which is the subject matter of the suit. He pointed out that the learned Trial Judge has correctly held that the petitioners failed to produce any documents explaining their interest in the property bearing Survey No.14/1. He submits that in the absence of this,

there is really no case made out to interfere with the impugned order.

9] According to me, since the whole issue arose on account of the efforts of the petitioners to get their names entered into the assessment records on the basis of their claims to the ownership of the property bearing Survey Nos.14/1 and 14/2, it will be only appropriate if the petitioners are impleaded as defendants in the suit, so that they can formally explain their connection with or their interest in the property in which the subject matter of the suit. Any decree which may be made in the suit is bound to affect the petitioners. The petitioners in that sense are necessary parties or in any case they are certainly proper parties to the suit. Their presence will enable the Court to adjudicate all the issues which arose in the matter.

10] For all the aforesaid reasons, the impugned order dated 1 July 2015 is set aside. The learned Trial Judge is directed to permit the impleadment of the petitioners as defendants in the suit. Respondent Nos.1 and 2 are directed to carry out

formal amendment within four weeks from today. Mr. Surel Shah, learned counsel for the petitioners states that written statement be filed within four weeks thereafter. This statement is accepted.

11] It is made clear that this Court has not adverted to the merits of the matter and therefore, rival contentions on merits are kept open for determination by learned Trial Judge.

12] The interim order granted earlier is now vacated and the parties are now directed to appear before the learned Trial Judge on 25th March 2019 at 11.00 a.m. and produce the authenticated copy of this order.

13] Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

14] All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)