

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

WRIT PETITION NO.3477 OF 2016

Vijaykumar Bhalchandra Joshirao & Ors. ... Petitioners
Vs.
Yogesh Prabhakar Joshirao & Ors. ... Respondents

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Mr. Ashok M. Misal for the Petitioners.
Mr. V. B. Rajure for respondent No.1.

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CORAM : M. S. KARNIK, J.

DATE : 24th SEPTEMBER, 2019.

P. C.:

1. Heard learned counsel for the parties.

2. The petitioners by this petition is challenging the order passed below Exhibit 49 by the Trial Court allowing the application for amendment subject to cost of Rs.500/- to be paid to defendant Nos.1 to 3.

3. The petitioners are the original defendant Nos.1 to 3. The respondent No.1-plaintiff had filed a suit for partition and separate possession. There were some proceedings pending before the Sub Divisional Officer and therefore the defendant

Nos.9 to 13 who are authorities of the Government were impleaded as party defendants. The Sub Divisional Officer decided the R.T.S. Appeal No.6 of 2013 and passed an order in favour of the plaintiff on 16.8.2013 which was reflected in record of right of mutation entry No.10784. The application was made below Exhibit 49 for amendment under Order VI Rule 17 of the Code of Civil Procedure to bring these facts on record and for deleting the defendant Nos.9 to 13 as no reliefs are claimed against them. The Trial Court allowed the application. Learned counsel for the petitioners would submit that a counter claim has been filed by them in the said suit. According to him the presence of defendant Nos.9 to 13 is necessary to effectively adjudicate the controversy involved in the suit. He would further submit that he has already filed an Appeal against the order of the Sub Divisional Officer before the Commissioner. He would submit that the property is given by the Government on lease in favour of defendant Nos.1 to 3 on yearly basis. He would submit that the deletion of defendant Nos.9 to 13 from the array of the parties would effect his counter claim.

4. I have gone through the order passed by the Trial Court. The plaintiff by filing the application wanted to bring on record the order passed by the Sub Divisional Officer in his favour. Further the plaintiff applied that the defendant Nos.9 to 13 are not necessary party as no reliefs are claimed against them. In so far as the suit against the plaintiff is concerned, the plaintiff being the dominus litis has chosen to delete the defendant Nos.9 to 13 from the array of defendants. The counter claim of the defendant Nos.1 to 3 would obviously be decided on its own merits. It would always open for defendant Nos.1 to 3 to raise an objection of non joinder of necessary parties. The Trial Court will obviously decide the objections which may be raised by defendant Nos.1 to 3 on its own merits and in accordance with law in the additional written statement filed by the defendant Nos.1 to 3 to the amended plaint.

5. It is made clear that if an appropriate application is made by the defendants to the Trial Court that the presence of some of the parties are necessary to decide the counter claim, the application made by defendant Nos.1 to 3 can always be considered by the Trial Court on its own merits.

6. With these observations, the petition is rejected with no order as to costs.

(M. S. KARNIK, J.)