

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3903 OF 2018

Maltibai Bhagat and anr. ..Petitioners
vs.
Dattaram Bhoir and ors. .. Respondents

Mr. Uday Warunjikar a/w. Mr. Rahul P. Walvekar for the
Petitioners.

Mr. Sandeep N. B for Respodnent No.1.

Ms Aakanksha Helaskar I/b Mr. Ashutosh M. Kulkarni for
Respondent No.2

Ms Aruna Koli I/b Mr. Ganesh S. Koli for Respondent No.3.

CORAM : M. S. SONAK, J.

DATE : 11 MARCH 2019.

ORAL JUDGMENT:

1] Heard Mr. Warunjikar, learned counsel for the
petitioners and Ms Aruna Koli, learned counsel for the
respondent No.3.

2] The challenge in this petition is to the order dated 30th
January 2018 made by the 7th Joint Civil Judge, Junior
Division at Panvel below Exhibit-19. By the impugned order,
the learned Trial Judge has directed the petitioners –
plaintiffs to implead respondent No.3 as a defendant in the
suit.

3] Mr. Warunjikar submits that the suit as instituted is
essentially for heir-ship. He submits that in such a situation
respondent No.3, which is a proprietary concern of
Mr.Samrat Patil, is neither a necessary nor a proper party.

He submits that Mr. Samrat Patil has admittedly no relationship whatsoever with either the plaintiffs or the defendants in the suit. He submits that respondent No.3 is a builder and if such a builder is permitted to be impleaded as defendant in the suit, there is possibility of the suit being protracted indefinitely. He submits that the impugned order contains no reasons whatsoever. He submits that in any case the plaint does not seek any relief in relation to decree in Special Civil Suit No. 60 of 2012. Therefore, the learned Trial Judge was not justified in referring to such decree and on such basis directing impleadment of respondent no.3. For all these reasons, Mr. Warunjikar submits that the impugned order is liable to be set aside.

4] Ms Aruna Koli, learned counsel for respondent No.3, defends the impugned order on the basis of reasoning reflected therein. She points out that this is not a suit for mere heir-ship but the prayers are very widely worded. She submits that if such reliefs are granted, then same will directly affects the right, title and interest of respondent No.3. For these reasons, Ms Koli submits that the impugned order may not be interfered with.

5] The rival contentions now fall for determination.

6] From perusal of the plaint, including in particular the prayer clauses in the plaint, it cannot be said that the suit as instituted is only for declaration of heir-ship. The petitioners

– plaintiffs, apart from such declaration, have sought for several reliefs including relief of injunction, restraint on creation of third party rights etc..

7] The learned Trial Judge has noted that there is a decree in terms of which respondent No.3 claims some interest in the suit property. The parties to such decree are respondent No.3 and the original defendant No.1. At this stage, learned Trial Judge has quite correctly declined to go into the issue as to whether such decree was collusive or not. However, taking into consideration the reliefs applied for in the plaint, including the reliefs in relation to creation of third party rights, it cannot be said that respondent No.3 is not even a proper party to the suit. The discretion cannot be said to have been unreasonably exercised by the learned Trial Judge in the matter of exercise of powers under Order 1 Rule 10 of CPC.

8] The apprehension expressed by Mr. Warunjikar that since respondent No.3 is a builder, respondent No.3 will protract the proceedings can always be addressed by issuing directions to the learned Trial Court that the matter should not be adjourned unnecessarily, particularly at the behest of respondent No.3. Learned counsel for respondent No.3 also states that unnecessary adjournment will not apply for on behalf of respondent No. 3. This statement is accepted. In any case, the learned Trial Court can always issue

appropriate orders, if there is any attempt to unnecessarily delay the proceedings in the suit.

9] For all the aforesaid reasons, this petition is dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)