

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.3813 OF 2013
in
FIRST APPEAL NO.574 OF 2012

Nilang Krishnakant Pathare .. Applicant
vs
Mrs.Abhilasha Ajit Rawal .. Respondent

with CIVIL APPLICATION NO.3287 OF 2019

Mrs.Abhilasha Ajit Rawal .. Applicant
(Orig.Deft no.1)
vs
Krishnarao Mukund Chemburkar & ors .. Respondents
(Orig.Plff nos.1 to 4 & Deft)
with FIRST APPEAL NO.574 OF 2012

Mrs.Abhilasha Ajit Rawal .. Appellant
vs
Krishnarao Mukund Chemburkar .. Respondent

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Mr.Balkrishna Joshi with Ms.Gauri Jadhav for Appellant in
F.A.No.574/2012 and Applicant in CA No.3287/2019 and for
Respondent

Mr.Rajdeep D.Gule I.b M/s Khandeparkar & Associates
for Applicant in C.A.No.3813/2013

Mr.R.V.Govilkar with Ms.Shoba Khan and Ms.Kinjal Jain
i/b M/s Mahesh Menon & Co for Applicant in C.A.(St) No.
24241/2018 and Respondent nos.1 to 4 in CA No.3287/2019
and F.A.No.574/2012 and C.A.No.3813/2013.

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CORAM : SMT.ANUJA PRABHUDESSAI,J

DATE : 9th OCTOBER, 2019

P. C.

1. The applicant herein has sought to direct the appellant who is the original defendant, to implead him in this appeal as a party-respondent. In the alternative, the applicant has prayed that he should be allowed to intervene in the First Appeal.

2. The learned counsel for the applicant submits that the applicant is the owner of the suit property. The applicant had filed a civil suit against the respondents in this appeal seeking a declaration that he is the owner of the suit property. He submits that though the suit filed by the applicant has been dismissed, the appeal preferred against the said judgment has been admitted and the same is pending hearing. The learned counsel for the applicant contends that the applicant being the owner of the property, his presence is necessary to decide the issues in this appeal.

3. Mr.Govilkar, the learned counsel for the respondents submits that the respondents had filed a suit against the appellant on the ground that she is a trespasser. He submits that the appellant does not claim any rights through the applicants, but has claimed right in her individual capacity and that the defence raised by the

appellant has been rejected by the trial Court and she has been held to be a trespasser. The learned counsel for the respondent submits that the applicant is neither a necessary nor a proper party.

4. I have perused the record and considered the submissions advanced by the learned counsel for the respective parties. The only issue which falls for consideration is, whether the presence of the applicant herein is necessary, to decide the issues involved in this appeal.

5. Undisputedly, there is a dispute between the applicant herein and respondents/plaintiffs over the title of the suit property. The civil suit filed by the applicant has been dismissed and an appeal against the said judgment, has been admitted by this Court. The issue as regards the title will be decided in the said appeal.

6. The respondents/plaintiffs had filed a suit against the appellant/defendant alleging that she is a rank trespasser. The appellant does not claim right to the property through the applicant. In fact, she had claimed right to the property in her individual

capacity. Hence, the right of the applicant will not be affected if he is not added as a party.

7. Hence the presence of the applicant is not necessary to decide the issues raised in the suit or to effectively adjudicate the appeal. The application has no merits and is accordingly dismissed.

(Smt.Anuja Prabhudessai, J)