

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8364 OF 2014

Bhausahab Jibhau Pawar and Anr. ...Petitioners
vs.
Surendra Eknath Tisge and Ors. ...Respondents

Mr. N.R. Bubna, for the Petitioners
Mr. M.M. Sathaye, for Respondent Nos. 2 to 5.

CORAM : M. S. SONAK, J.

DATE : APRIL 10, 2019

P.C.:

. Heard Mr. Bubna, learned counsel for the Petitioner and Mr. Sathaye, learned counsel for Respondent Nos. 2 to 5.

2. The challenge in this Petition is to the order dated 25th July, 2014 by which the learned trial Judge has ordered the impleadment of Respondent Nos. 2 to 5 as Defendant Nos. 2 to 5 in the suit.

3. Mr. Bubna, learned counsel submits that the Respondents are neither necessary nor proper parties. He submits that the suit basically seeks specific performance and therefore besides the proposed vendor and the proposed purchaser, there can be no

other parties to such suit. He submits that the impleadment of the Respondents is bound to embarrass the trial in the suit.

4. In the present case, the learned trial Judge has recorded *prima facie* finding that Respondents who are now ordered to be impleaded as Defendants are not strangers but are wife and children of the main Defendant. There is *prima facie* finding that the suit property in respect of which specific relief is claimed, is not self acquired property of the Defendant but an ancestral property. At this stage, it is not necessary to pronounce the consequences of all these aspects. However, in these circumstances, the learned trial Judge has discretion and ordered impleadment of the Respondents as Defendants in the suit in order to effectively adjudicate all the issues arise in the suit. It can not be said that discretion has been exercised unreasonably or the impugned order is in excess of jurisdiction. In fact on 5th April, 2019 this Court made the following order:

“At the request of Mr. Bubna, learned counsel for the Petitioners, stand over to 10th April, 2019 on the supplementary board in order to enable Mr. Bubna to take instruction as to whether the decree in the suit will bind Respondent Nos. 2 to 5.”

5. The aforesaid order was made in order to enable Mr. Bubna,

learned counsel for the Petitioner to take instructions as to whether the decree in the suit will bind Respondent Nos. 2 to 5 in case they were not impleaded as Defendants in the suit. Predictably Mr. Bubna states that he has not complied with to obtain the instructions from the Petitioner. On this count, it does appear that the Petitioners seek decree against the Defendants and on the basis of it, will undoubtedly seek to effect the rights of Respondent Nos. 2 to 5. In such a situation, it cannot be said that the learned trial Judge has exercised its discretion unreasonably or exceeded its jurisdiction.

6. For the aforesaid reasons, this Petition is required to be dismissed and is hereby dismissed.

7. There shall be no order as to costs.

(M. S. SONAK, J.)